Appellate Case No. 25A-CR-00591

STATE OF INDIANA	)	IN THE ALLEN SUPERIOR COURT
	)SS:	
COUNTY OF ALLEN	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,
Plaintiff,

VS.

RICHARD M. ALLEN,
Defendant.

THE HONORABLE FRANCES C. GULL, PRESIDING

The Transcript

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posts on any social media platform. When we reconvene later this week, I will swear you in to serve as the jury and we will begin our travel process to Delphi, Indiana. All right. Juror 1 in seat 1, you have been accepted as a juror to serve in this matter. Juror 28 in seat 2, you have been excused. Juror 16 in seat 3, you have been excused. Juror 14 in seat 4, you have been excused. Juror 30 in seat 5, you have been selected to serve as a juror in this case. Juror 48 in seat 6, you have been excused. Juror 39 in seat 7, you have been excused. Juror 42 in seat 8, you have been excused. Juror 11 in seat 9, you have been selected to serve as a juror in this case. Juror 45 in seat 10, you have been excused. Juror 32 in seat 11, you have been excused. And, Juror 2 in seat 12, you have been selected serve as a juror in this case. And I'll ask – Corporal Tinkel will get you – all 12 of you into the jury room, release those that have been released, and he will talk with the rest of you. Okay. All right. While they're filling out, we're gonna go ahead and take about a 15-minute break. Since all of the jurors had to use the restrooms, I'm sure you do, as well. So let's reconvene at noon and we'll finish jury selection.

MR. MCLELAND: Thank you, Judge.

(Off record at 11:43 a.m.)

(On record at 12:00 p.m.)

THE COURT: Okay. We're ready.

THE BAILIFF: All right. 52, seat 1. Juror 3, seat 2. 54, seat 3. Juror 40, seat 4. Juror 36, seat 5. Juror 10, seat 6. And in the back row, Juror 24, seat 7. No, down. 23, seat 8. 25, seat 9. Juror 12, seat 10. Juror 35, seat 11. 51, seat 12.

THE COURT: Thanks, Jason

VOIR DIRE BY THE COURT

ANSWERS BY POTENTIAL JURORS.

Q Okay. Juror 52, did you have any responses to any of my questions?

JUROR 52: Uh-uh, no.

Q Okay. And you heard me explain the sequestering process; and do you have any concerns about that?

JUROR 52: No.

Q Okay. Juror 3, did you have any responses to my questions?

JUROR 3: No.

Q And you heard me explain the sequestering process; do you have any concerns about that?

JUROR 3: No.

Q Okay. After 54, did you have any responses to my questions?

JUROR 54: No, I did not.

Q And you heard my explanation about the sequestering; any concerns with that?

JUROR 54: No, I did not.

Q Okay. Juror 40, did you have any responses to my questions?

JUROR 40: No.

Q Okay. And you heard my explanation about being sequestered; any concerns with that?

JUROR 40: Yes. I have three small children, one of whom I'm breastfeeding, so it'd just be really difficult to be gone for that long.

Q Okay. And I'm sorry, you have three small children?

JUROR 40: Yes.

Q And you are currently nursing one of those children. How old is that one?

JUROR 40: Five months.

Q So, obviously, you can't bring your baby with you.

JUROR 40: Right.

Q Okay. If you were given the opportunity to express milk and store it, would that be any help to you?

JUROR 40: Very little help.

Q Okay. Any other concerns that we need to discuss?

JUROR 40: No.

Q Okay. Juror 36, did you have any responses to my questions?

JUROR 36: No.

Q And you heard me explaining the sequestering process; any concerns that you have with that?

JUROR 36: No.

Q Okay. Juror 10, did you have any responses to my questions?

JUROR 10: No.

Q And you heard my explanation about being sequestered; any concerns with that?

JUROR 10: No.

Q Juror 24, did you have any responses to my questions?

JUROR 24: (Responds by shaking head in the negative.)

Q No? And you heard my explanation about being sequestered; any concerns with that?

JUROR 24: Yes.

Q And what are your concerns?

JUROR 24: I cannot leave far away from my home and –

Q I'm sorry, you need to speak up.

JUROR 24: I cannot leave far away from home and I'm being watched.

Q Okay. And being under the supervision of the bailiffs?

JUROR 24: Yes.

Q Okay. That would cause you some concerns?

JUROR 24: Yes.

Q Okay. Anything else that you need to share with me?

JUROR 24: English is my second language, I don't understand half of what is said here.

Q Okay. And what is your first language, please?

JUROR 24: Russian.

Q Russian. All right. Thank you very much for sharing that with me. Juror 23, did you have any responses to my questions?

JUROR 23: Yes.

Q And what are they?

JUROR 23: I have two small children, as well, that would make it hard for me to be gone for a month, and I have a family member in law enforcement.

Q And your family member in law enforcement, do you speak with them about their work?

JUROR 23: Yeah, sometimes.

Q Anything about their work or those conversations that would affect your ability to be fair and impartial?

JUROR 23: No.

Q Okay. And the two small children that you have, how old are your children?

JUROR 23: Five and nine.

Q Okay. And you have – if you were selected to serve and be given the opportunity to make arrangements for your children, could you do that?

JUROR 23: I could probably make it work, it just would be difficult.

Q It would be difficult, and I understand that it's not ideal –

JUROR 23: Yeah.

Q -- but you could do it if you were called upon to do that?

JUROR 23: Correct.

Q Okay. Anything else that we need to talk about?

JUROR 23: That is it.

Q Okay. Juror 25, did you have any responses to my questions?

JUROR 25: No.

Q And you heard my discussion about the being sequestered; any concerns about that?

JUROR 25: Yeah, my job. I accompany at PFW for – there's a performance coming up in a couple weeks, and it would be really hard for them to find another person to fill my part.

Q Okay. And I'm sorry, what is it that you do for a living?

JUROR 25: I accompany, play piano –

Q Okay.

JUROR 25: -- for – I'm like on contract as a limited-term lecturer kind of.

Q Okay. And if you were called upon to serve, would you be able to make arrangements to have your obligations covered?

JUROR 25: I'm not sure. I don't know people personally that would fill my spot, I don't know if maybe they could find another pianist.

Q Okay. So – but that wouldn't be on you do, that would be on the school to find that?

JUROR 25: I think so.

Q Okay. Okay. Any other concerns?

JUROR 25: Yeah. I'm concerned with the graphic photos.

Q Okay.

JUROR 25: I don't think that I would be a good – I don't think I'd be able to –

Q Okay. Thank you for sharing that with me. And anything else?

JUROR 25: That's it.

Q Okay. Juror 12, did you have any responses to my questions?

JUROR 12: No.

Q And you heard my explanation about being sequestered; any concerns out of the norm for that?

JUROR 12: Yeah. I have a newborn at home, three-weeks old. I'm also scheduled to be out of the country five days from now. It'd just difficult. And I think my profession, as well as being away for five weeks, would be a serious detriment to my family. And I also have family and friends in law enforcement.

Q Okay. And the family and friends in law enforcement, do you talk with them about their work?

JUROR 12: Yes.

Q Anything about those conversations or their work that would affect your ability to be fair and impartial?

JUROR 12: Possibly.

Q Okay. And is that something that you could set aside?

JUROR 12: Having known about this case for a while, probably not.

Q Okay. And you are scheduled to be out of the country for work or pleasure?

JUROR 12: For work.

Q Okay. And what is it that you do for a living?

JUROR 12: I'm a professional pilot and I have coveted visas that take months to obtain that I have to use or (inaudible).

Q Okay. Okay. And leaving your wife at home with a three-week old newborn?

JUROR 12: Yeah. It'll be a lot to juggle.

Q Okay. All right. Thank you, sir. Juror 35, did you have any responses to my questions?

JUROR 35: Just one really, I'm 75, I have a few chronic health issues –

Q Okay.

JUROR 35: -- and one of those is my bladder, I cannot go very long without having to go to the bathroom.

Q Okay. And we take breaks about every two hours. Not sure about that?

JUROR 35: No, I'm not at all sure.

Q Okay. You understand – well, let me back up: Indiana has very few exemptions from jury duty anymore, one of them is, however, age; and at the age of 75, you are free to request an exemption from jury duty. You didn't know that?

JUROR 35: No.

Q Oh. Do you want off?

JUROR 35: Yeah.

Q Okay.

JUROR 35: Thank you.

Q Work my magic. Okay. Thank you, sir. And, Juror 51, did you have any responses to my questions?

JUROR 51: Where I work at, I work around security and police officers.

Q I'm sorry, say that again.

JUROR 51: Where I work at, I work around security and police.

Q Okay. So you know a lot of police officers?

JUROR 51: Huh?

Q You know a lot of police officers?

JUROR 51: A lot that work there.

Q Okay. Do you talk with them about their specific jobs?

JUROR 51: We talk probably every day, but –

Q Okay. Is there anything about their employment or those conversations that would affect your ability to be fair and impartial?

JUROR 51: I don't –

Q You can't think of anything? And you heard my conversation about being

sequestered; are there any concerns that you have about that?

JUROR 51: Being away from my family.

Q Okay.

JUROR 51: It would be really tough.

Q Okay. Thank you, sir.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

THE COURT: You've got 30 minutes.

VOIR DIRE BY THE STATE – MR. MCLELAND

ANSWERS BY POTENTIAL JURORS.

Q Ladies and gentlemen, good morning. You heard me ask before, who's nervous to be here? Okay. All right. So part of that is a lot of you speak softly, just gonna need you to speak up so that I can hear you, so the Defense can hear you, and so the Judge can hear you. Unfortunately, these microphones, they don't amplify, so if – I may ask you to speak up just a little bit, so I can get to know you a little bit. Welcome to jury selection. As I said before, this is an opportunity for us, the attorneys, to get to know you better, to make sure you're a good attorney [sic] for this case. You're all good attorneys, just not sure if you're a good attorney for this case. So I want to focus on some of the concerns the Judge had pointed out. Make sure I look at my notes right. Ma'am, Number 25, would it be your responsibility to find somebody to replace you or the school's? I couldn't hear your answer when the Judge asked you.

JUROR 25: I think it would be the school, since they know more of other staff or other accompanists.

Q And do you have a contract with them right now?

JUROR 25: Yeah.

Q And so only you can tell us this, we don't know who you are, so only you can tell us, is the fact – if you're picked as a juror, is the fact that you have that going on, is that gonna weigh in your mind to the point where you can't focus on what's going on here in court?

JUROR 25: Probably not. I mean, I feel bad, but –

Q Sure. But if you're not the one that has to find a replacement, then –

JUROR 25: Yeah.

Q Is it gonna put you in a situation financially where it's gonna be a detriment?

JUROR 25: Probably not.

Q Okay. So if you're picked as a juror, you're okay to be a juror on this case?

JUROR 25: Other than the graphic image problem.

Q Okay.

JUROR 25: Yeah. I mean, timewise or like scheduling-wise –

Q Time wise, school –

JUROR 25: -- I'll be good.

Q I don't imagine anybody here likes looking at graphic images, and I imagine that, unless you're involved in some kind of a hospital, nursing, that kind of profession, you're not used to seeing those graphic images; and so I agree with you, they're probably gonna be hard to look at, but I want to focus mainly on work and home or the things at work and home that would draw your attention away from being able to pay attention to what's presented in court. And you're telling me no, there's not, and you'd be able to pay attention; is that what you're

telling me?

JUROR 25: Yeah.

Q Okay. It got lost in the shuffle there, a little bit. All right. Ma'am, Number – and it's a little impersonal, I've gotta call you by numbers. I hate it, but it is what it is. Ma'am, Number 23, you said you had two kids at home.

JUROR 23: Yeah.

Q And was there something else there?

JUROR 23: Just law enforcement.

Q Law enforcement. Thank you. I couldn't read my own notes. The kids at home, do you think, if you're chosen as a juror, can you get caregiving for them?

JUROR 23: I would have to use a lot of resources.

Q Okay. Having those kids at home, is that gonna be something that's gonna weigh on your mind to the point where you can't pay attention to what's going on here in court?

JUROR 23: Not during the day. During the evening, would I be able to check in at all?

Q I think they'll give you some time to talk on the phone or FaceTime or – I mean, that's kind of – again, that's outside my pay range, but I think they'll give you time to make phone calls. You'll have to be supervised by a bailiff, but I think you'll have time to make contact with family.

JUROR 23: Okay.

Q Does that alleviate your concerns?

JUROR 23: Yes.

Q Being away from the kids and the family that long, is that a concern of yours?

JUROR 23: It would be a nice vacation. No, I'd be okay. I would make it work.

Q Fair enough, fair enough. Your connections with law enforcement, is that a concern that either myself or the Defense should have?

JUROR 23: I don't think so.

Q Okay. Are you going to – and we'll get into credibility of witnesses later, but are you going to consider testimony by a law enforcement, give that more credit simply because they're a law enforcement officer, as opposed if they were not?

JUROR 23: No.

Q Okay. All right. Let me make sure – sir, Number 12, the pilot, you talked a little bit about the visas. You have to have – what I'm hearing is you have to have visas in order to be able to pilot these – your passengers wherever you're going?

JUROR 12: Yeah, correct, different countries have different rules that we need to prepare for.

Q And the trip you have in three weeks you said, did you have to get visas for that trip?

JUROR 12: Five days from now.

Q Five days, I'm sorry, five days. The trip you have in five days, did you have to get visas to do that, to take that trip?

JUROR 12: Correct.

Q And it takes months to get those visas?

JUROR 12: Correct.

Q And I think, if I remember correctly, you're the sole provider in the home,

meaning the one working financially; If you had to cancel that trip and cancel those visas, would that be a hardship on your family?

JUROR 12: It would. No offense, the per diem per day is not a drop in the bucket.

Q Sure. That was my next question, so I appreciate you addressing that.

JUROR 12: Yeah, I'm just being honest.

Q I get it. And so, is that something – could that affect your work with later – I'm gonna say contracts? I don't know what you do in the pilot world, but could that affect you being able to get work in the future if you cancel this trip?

JUROR 12: It could.

Q Okay.

JUROR 12: Unfortunately, it's an un written rule that it could weigh against me in a negative light.

Q Okay. And so are you gonna be thinking about that instead of focused on what's going on in here – what's going on here in trial?

JUROR 12: Absolutely.

Q Okay. Let's see – I think that – ma'am, I got your issue. And then, sir, I think – do you want to be exempt from jury duty? I guess that's the question.

JUROR 75: I would, yeah.

Q Okay. All right. Well, then I'm not gonna ask you anymore questions; okay?

JUROR 75: Oh, darn. I've got some good answers.

Q I'm sure you do, but I have limited time so, respectfully, I'm gonna talk to some people that may be on the jury. The State of Indiana has charged Richard Allen with four counts of murder and you've heard me talk about that, and I

don't want to talk about what the State of Indiana is charging him with, I just want to talk about murder in general. And so I'm gonna start with, sir, Number 10, what do you think about when you hear the charge of murder?

JUROR 10: Probably one of the worst crimes in my opinion.

Q Can you speak up just a little bit so everybody can hear you?

JUROR 10: Probably one of the worst crimes in my opinion.

Q Sure. What kind of evidence would you expect to see?

JUROR 10: I don't know, witnesses, DNA maybe, maybe camera footage.

Q Okay. Sir, Number 36, what do you think of when you hear murder?

JUROR 36: Loss of life, a change in a family unexpectedly. It's – like he said, it's probably one of the worst crimes, if not the worst crime, in my opinion.

Q Yeah. I mean, it's the highest crime in Indiana, I mean, so yeah, that's valid. What kind of evidence would you expect to see?

JUROR 36: DNA, a weapon of any kind used, footage, witnesses, that's about it.

Q Okay. Ma'am, Number 25, what do you think of when you hear murder?

JUROR 25: Killing.

Q Sure. What kind of evidence would you expect to see?

JUROR 25: Probably somewhat of what's been said, a combination of –

Q Sure.

JUROR 25: -- either witnesses, DNA, weapons.

Q I talked about *CSI* earlier, does anybody expect us to be like *CSI?* Does

anybody have that expectation that, hey, this is gonna be like *CSI*?

A (No response or indication from any potential juror.)

Q Okay. Talked about the State has to use that evidence to convince you beyond a reasonable doubt, where you're firmly convinced, and I used the attorney example. So, sir, let me – Number 54, do you believe I'm an attorney?

JUROR 54: Yes, I do.

Q Why do you believe that?

JUROR 54: Well, you have the credentials. You wouldn't be standing up here if you didn't.

Q Sure, sure. You haven't seen any of that information, you don't know me; right? But you're firmly convinced?

JUROR 54: Yes.

Q Using your common sense to make that decision?

JUROR 54: Yep.

Q Anybody here believe I'm not an attorney?

A (No response or indication from any potential juror.)

Q Anybody want to see more?

A (No response or indication from any potential juror.)

Q Now again, I want to reiterate this, deciding whether or not I'm an attorney is different from deciding whether or not someone's guilty of murder, and the point of that analogy is not to compare the two or say the two are the same. The point is to express to you that we expect you to use your common sense that you bring into the courtroom to make decisions, to determine whether or not you're firmly convinced. And sometimes that takes a lot of evidence and sometimes it doesn't, but you've got to use your common sense. And so in no way am I saying

deciding whether or not I'm an attorney, which is a rather small question to ask or a small decision, am I comparing that to murder. Now, when you talk about murder, do you think the burden should be higher than firmly convinced? It's easy when I'm asking you if I'm an attorney or not, because it's low stakes, low risk; right? If you say, "No, I don't believe it," nothing. Talk about murder. Do you think firmly convinced is appropriate?

JUROR 54: I think we need to weigh all the evidence to make sure. I mean, you're talking about a man's life –

Q Sure.

JUROR 54: -- that, you know, we would be responsible for.

Q Now, you can't worry about the punishment.

JUROR 54: Right, right.

Q But still, I – yeah.

JUROR 54: I'm just talking about, you know, all the evidence has to point to his guilt.

Q Do you think it should be beyond all doubt when talking about murder?

JUROR 54: I do.

Q A hundred percent? You think it should be – I say 100 percent – you think it should be 100 percent beyond all doubt?

JUROR 54: In my opinion, yes.

Q Okay. And so if I'm wrong, tell me, but what I'm hearing you say is, in terms of – on murder, firmly convinced it's not enough, it should be beyond all doubt?

JUROR 54: Yes.

Q Okay. If the Judge asks you to set that aside, says, "Look, you can't think

that way. This is the rule, this is what you have to follow," is that unfair for her to do that?

JUROR 54: No, it's not unfair.

Q Can you do that?

JUROR 54: Yes, I probably can.

Q Okay.

JUROR 54: But I can't tell you –

Q You're not making me feel warm and fuzzy inside.

JUROR 54: Yes.

Q Okay. You think you could do it?

JUROR 54: I think I could do it.

Q Okay. All right. Ma'am, Number 23, you heard the conversation I had with – Mr. 54's almost what I said – but you heard the conversation I had with sir in the front row. What do you think? Do you think on murder the burden of proof should be higher?

JUROR 23: Yes.

Q Do you think it should be beyond all doubt?

JUROR 23: A hundred percent.

Q Okay. What if the Judge tells you, "Look, that's not the burden, the burden is firmly convinced beyond reasonable doubt, you gotta follow that rule", can you do that? Or are you gonna hold the State to the standard of, "Look, you gotta prove 100 percent, it's gotta be beyond all doubt for me"?

JUROR 23: I would have to say 100 percent.

Q Okay. And you couldn't set aside that belief if the Judge told you to follow something different?

JUROR 23: Probably not.

Q Okay. I want you guys to be honest with me, so I appreciate you being honest. It's okay, this is what we want to know. And so for you to be firmly convinced, it would have to be 100 percent?

JUROR 23: Um-hmm. (Affirmative response)

Q Okay. All right. Is there anybody else here that thinks that burden is too low, the firmly convinced burden? Anybody else here –

MR. BALDWIN: I object. Judge, may I object? May I approach?

THE COURT: Sure.

(Sidebar conference conducted.)

THE COURT: I need you up here.

MR. BALDWIN: Sorry, Judge.

THE COURT: That's okay.

MR. BALDWIN: He's saying that that is the burden is on – the burden is firmly convinced. That is not the burden. He's continually said that over the last two days. And then, on top of that, Judge, you did not give the instruction that's a full instruction, which takes in all the language that is what I would liken more friendly to the Defense, and then he's the giving a false impression what the burden is to the jury continually.

THE COURT: The burden of proof is proof beyond a reasonable doubt, that is the firmly convinced. I understand your argument, but I don't read the instruction to the jury until preliminaries. So you are free – and I know that you did it yesterday, where you read them the full instruction and I allowed you to do that, but it is – part of that instruction is firmly convinced.

MR. BALDWIN: Well, then he should say it's part of the instruction.

THE COURT: Okay. That's fair.

MR. BALDWIN: Thank you.

Q And so, to meet the burden, the State has to show you evidence, and that's gonna be in the form of physical evidence and then witness testimony, so I want to talk a little bit about the things you're gonna look for when determining the credibility of a witness. And so, sir, Number 12, what kind of things – when a witness is testifying, what kind of things are you gonna look for to determine whether or not they're credible?

JUROR 12: Possibly their past history and experiences.

Q Okay.

JUROR 12: How they present, I'm gonna look at that.

Q Okay. So, ma'am, Number 25, what kind of things are you gonna look for?

JUROR 25: To add on, maybe consistency.

Q Okay.

JUROR 25: Background.

Q Okay. Sir, Number 3, I haven't talked to you much, what –

JUROR 3: I feel the same way they do.

Q Okay. What about if an expert testifies? What kind of things are you gonna look at to determine whether or not their testimony is credible? I'm gonna stick with you, sir, Number 3?

JUROR 3: The answers they give maybe.

Q Okay. Are you gonna take into consideration their education or experience?

JUROR 3: Yeah.

Q Okay. Sir, Number 52, what if a law enforcement officer testifies? We

talked a little bit about this I think the last round. If a law enforcement testifies, are you gonna give him or her more credibility simply because they're a law enforcement officer?

JUROR 52: No, 'cause they're humans just like us, so I would go by the evidence that's made, you know –

Q Sure, sure.

JUROR 52: -- available.

Q Would you give them more credibility if it was in a specialized field, like if they were –

JUROR 52: Oh, yeah.

Q -- talking about traffic offenses or –

JUROR 52: Oh, yeah.

Q -- something like that, something they have experience with?

JUROR 52: Experience with.

Q Sure, sure, sure, sure.

JUROR 52: Yeah.

Q Okay. Gotcha. We talked a lot – and this is going faster, and so I guess let me stop here for a minute. Are there any questions about anything that I want over the first round?

A (No response or indication from any potential juror.)

Q Okay. One of the things I like to touch base on every time is passing judgment on someone. There are some people that say, "Look, I – either my personal beliefs or religious beliefs, I cannot pass judgment on someone." Is there anyone here that feels like that even a little bit?

A (No response or indication from any potential juror.)

Q Is there anyone here that says, “Even if the State proves beyond a reasonable doubt each element of the offense, I still can't enter a judgment of conviction, ‘cause I cannot pass judgment on someone”? Anybody feel that way?

A (No response or indication from any potential juror.)

Q Does anybody feel like they wouldn't be a good juror for this case besides the work and home reasons that we talked about? Is there anybody else that feels like they wouldn't be a good juror on this case? Sir, Number 30 – okay, I'll come back to you. Sir, Number 36, why do you don't think – or why don't you think you'd be a good juror on this case?

JUROR 36: Well, one, I'm the sole provider of my household financially, and I actually just started the current job that I have just a few months ago and, before that, I was unemployed for about six months, so I – you know, I’m, you know, trying to, you know, get myself, you know, financially stable again.

Q Sure.

JUROR 36: And, you know, being away from home for that long really wouldn't suffice, you know, my situation, so –

Q Have you talked to your employer about, if you're chosen to serve, that you could be away for three weeks or a month?

JUROR 36: Um-hmm. (Affirmative response)

Q And are you still gonna have your job when you get back if you're chosen?

JUROR 36: Well, they told me that I would, but, you know, being away for that long, you know, being unemployed, you know, for, you know, that long –

Q Sure.

JUROR 36: -- you know, I'm just trying to build myself, you know, financially again, so –

Q Sure. Do you have children at home?

JUROR 36: No.

Q Okay.

JUROR 36: No. I do live with my father, he's self-employed right now and it – his business, he is actually coming into what we call the slow season –

Q Sure –

JUROR 36: So –

Q So finances are kind of tight right now at home?

JUROR 36: Yes, yeah.

Q And with you being unemployed, you're worried that you being gone for a month may affect your job some way?

JUROR 36: Yes.

Q Is that – I don't want to put words in your mouth –

JUROR 36: Yeah.

Q -- I'm just trying to summarize what you're telling me.

JUROR 36: Yeah.

Q If you're chosen as a juror, are you gonna be so worried about your employment that you're not gonna be able to focus on what's happening here in court?

JUROR 36: Yes.

Q And so you don't – do you think you'd be a good juror on this case, given those circumstances?

JUROR 36: No. To be honest, my mind would be occupied elsewhere –

Q Sure.

JUROR 36: -- instead of being focused on the case.

Q Sure. I appreciate you being honest. Thank you. Sir, Juror Number 52, you raised your hand a little bit, too?

JUROR 52: Yeah. Oh, yeah, because I took my – if I'm just sitting here, my mind starts to wander.

Q Okay.

JUROR 52: I'm afraid I might miss something that was very important, so that's why I do heating and air conditioning, 'cause I'm active and I can focus a lot better than just sitting here, so I think I wouldn't be a good juror.

Q If the Court gave you pen and paper to take notes, would that help alleviate some of your concerns?

JUROR 52: Probably not, no.

Q Okay. And so you're worried about your ability to –

JUROR 52: To be able to focus.

Q -- to remember facts –

JUROR 52: Exactly.

Q -- to remember testimony –

JUROR 52: Exactly.

Q -- those kinds of things?

JUROR 52: Yeah. I have a hard time with that.

Q Okay. And that's a concern enough for you that you don't think you'd be

a good juror in this case?

JUROR 52: Exactly.

Q Okay. Was there – you, Number 3, sir?

JUROR 3: Yeah. I'm a private processor for Allen County and I own my own business, and with just being gone, we wouldn't have that extra income coming in. And one of the firms that I worked for, the head attorney just had an accident and passed away yesterday –

Q Oh, I'm sorry about that.

JUROR 3: -- and just not sure if I'd be in the mindset for this.

Q Do you do service for the courts?

JUROR 3: Yeah.

Q You do? Okay. All the courts or just –

JUROR 3: Just Small Claims Court.

Q Just Small Claims Court, gotcha. Okay.

JUROR 3: And not saying that if I go that, you know, I'd be broke or anything, 'cause my wife also has income coming in.

Q Sure.

JUROR 3: She's been working for the attorney that passed away for 36 years.

Q Oh, okay. But you are concerned –

JUROR 3: I'm gonna need to be here for her in the hard time.

Q Okay, okay. Is she having a hard time with the passing?

JUROR 3: She's –

Q I imagine they were close.

JUROR 3: He hired her out of high school.

Q Okay.

JUROR 3: And been with – like I said, 36 years with him.

Q Sure. So you have some things going on at home that's gonna draw your attention away, there's also – sounds like there's concern financially that may be there. If you're chosen as a juror and you're – I guess let me start there. If you're chosen as a juror, are those things that are gonna be weighing on your mind to the point where you can't pay attention to what's going on here in court?

JUROR 3: Yes and no, I guess. Until I get there, you know –

Q Sure.

JUROR 3: -- I mean –

Q Till you're there, you – yeah.

JUROR 3: Yeah.

Q The Judge said that you may have time in the – or she didn't say it, I guess I said it, but you may have time in the evenings to make phone calls and then, on Sunday, you may have a family day. Does that alleviate some of your concerns?

JUROR 3: Yeah, just to be able to talk to her and –

Q Sure, sure.

JUROR 3: -- you know, see how she's doing.

Q Okay. Any other concerns that you have?

JUROR 3: That's it.

Q Was there anybody else besides some of the ones that we've already talked about, work and kids? I got all those.

A (No response or indication from any potential juror.)

Q Okay. Does anyone have a distrust for prosecutors or defense attorneys?

Who says, “Look, I don't trust attorneys in general”? Anybody feel that way?

A (No response or indication from any potential juror.)

Q Okay. Anybody had a bad experience with law enforcement to the point where, “Look, I don't trust cops now, I don't trust law enforcement”?

A (No response or indication from any potential juror.)

Q What about a prosecutor or a defense attorney, anybody have a bad experience with them?

A (No response or indication from any potential juror.)

MR. MCLELAND: Okay. Judge, how much time do I have?

THE COURT: Eight minutes.

MR. MCLELAND: Okay. Thank you.

THE COURT: I’m sorry, nine minutes.

MR. MCLELAND: Okay. Thank you, Judge.

Q Sir, I'm gonna focus on you for just a minute, ‘cause I just want to make sure – I know you said you can't tell until you get in the moment whether or not the stuff at home and with work is gonna distract you. Your gut feeling right now, is it telling you, because of those things, you'd be a good or bad juror on this case?

JUROR 3: I guess I'd be a good one.

Q Okay. And only you can tell us, you know, I don't know. And I appreciate and I understand that you don't know until you get in the situation, but you felt strong enough about it to bring it up to me, so I just wanted to touch base with you again to make sure, you know, if you've got those things at home and they're gonna distract you to the point where you can't focus on what's going on in court that's an issue. You may not be a good juror for this case, maybe a better juror

for another case –

JUROR 3: Sure.

Q -- at another time.

JUROR 3: Right.

Q And so – but you're telling me you're okay?

JUROR 3: I'm okay.

MR. MCLELAND: Okay. All right. I don't have any other questions, Judge. Thank you.

THE COURT: Okay. Mr. Baldwin.

MR. BALDWIN: Thank you.

VOIR DIRE BY THE DEFENSE – MR. BALDWIN

ANSWERS BY POTENTIAL JURORS.

Q Hi everyone. My name's Andy Baldwin. Mr. Allen sits here an innocent man constitutionally until the State of Indiana can prove his guilt beyond a reasonable doubt. Juror Number 1, it's a pretty high-minded concept. Do you believe in that constitutional provision that he actually is innocent as he sits over there?

JUROR 52: No, because he hasn't – there hasn't been a case discussed yet.

Q Okay. So the answer is?

JUROR 52: No.

Q No, you don't think he's innocent?

JUROR 52: Oh, yeah, I mean, he could be innocent.

Q He could be?

JUROR 52: Yeah, he could be and he could not be after the trial is

over.

Q I appreciate it. You know, it is a – it's like a tricky thing, and there's lawyers that try to trick the jury into this, where they're like, "Oh, he's" – you know, they – 'cause they say a lot of what you're saying –

JUROR 52: Right.

Q -- and "Well, I have to hear the evidence," they say. But actually, constitutionally, he is actually innocent as he sits over there. That's kind of hard for people to grasp. Is that – even a defense lawyer of 30 years, that's hard for me to grasp that at times, so is it – do you think and view him as he's innocent as he sits over here?

JUROR 52: No.

Q Okay. I appreciate that. Juror Number 2, what about you? Oh, I'm sorry.

JUROR 3: Three.

Q Juror 3 in seat number 2, yes.

JUROR 3: Yeah, I can't say if he is or not, I don't know much about what happened, only what I saw on the news.

Q Okay. And I do want to talk about that, too. Is it – and I know – it's really unfair to ask these questions as a lawyer, because I understand what you're saying, that it's hard to know until we hear the evidence. But, you know, I think that I saw you steal a couple of wallets out of somebody's car earlier today. Do you think that he's guilty as he sits there?

JUROR 10: No.

Q Should he be presumed innocent?

JUROR 10: Yes.

Q Okay. I know, it's kind of a cheap thing to do; right? I've done that in a

lot of trials.

UNIDENTIFIED JUROR: Steal a wallet?

Q You didn't steal any wallets, did you? No. I mean, that's the point is, you know, you can't prove a negative.

JUROR 10: Exactly.

Q So with that kind of – the way that I just stated that, is it easier to kind of press your brain into thinking, "I really want to view him as an innocent guy until they bring the goods"? Can you do that?

JUROR 3: Yeah.

Q And I do need you people – you folks to look into your hearts as you answer questions, 'cause this is serious stuff, and I don't want to get all serious about it, but I guess I need to. Do you think you're – you said you were kind of – a minute ago, when Mr. McLeland was talking, that you think you'd be a good juror.

JUROR 3: 'Cause I don't know really about it.

Q Yeah. You – here's the better – maybe a better question: Can you be fair?

JUROR 3: Oh, yeah.

Q Can you be fair to both sides?

JUROR 3: Yeah.

Q I mean, you work in a – you're a private process?

JUROR 3: Yeah.

Q You know, I'm a little concerned about that, like – it seems like that's kind of got a law enforcement kind of feel to it, serving – and who do you work – who do you, technically, work for?

JUROR 3: Perry Law Office and other firms here in town.

Q Oh, okay. I couldn't hear that.

JUROR 3: Sorry. Yeah.

Q Okay. So is there something about being in the legal community and kind of understanding, maybe having a little bit more inside information about how this all works, that you think would make you more – a better wit – a better juror or maybe have some biases that come along with it?

JUROR 3: Possibility.

Q Possibility? Can you kind of explain what you mean by that?

JUROR 3: Like I say, just being fair.

Q Okay.

JUROR 3: Here again, not knowing much about the case.

Q Do you think you have a – like your starting position is neutral or more on the Defense side or more on the prosecution?

JUROR 3: I'd say it's more neutral.

Q More neutral? Okay.

JUROR 3: I feel like I need to see more before I make, you know, my final decision.

Q Yeah. Yeah, well – okay. Speaking of seeing more, do you like to know all – as much information as you can?

JUROR 3: Um-hmm. (Affirmative response)

Q I mean, that's – is that important? Is that important to everybody, as much information as you can? Not just picking out a few things; right? I'm gonna read you the entire definition of proof beyond a reasonable doubt, it's not – the standard is not firmly convinced, it is – this is the standard. You probably – the burden is upon the State to prove beyond a reasonable doubt that the Defendant

is guilty of the crime charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the Defendant's guilt, but it does not mean that the Defendant's guilt must be proved beyond all possible doubt. A reasonable doubt is a fair, actual, and logical doubt based upon reason and common sense. A reasonable doubt may arise from either from the evidence or from a lack of evidence. Reasonable doubt exists when you are not firmly convinced of the Defendant's guilt after you have weighed and considered all the evidence. A defendant must not be convicted on suspicion or speculation. It is not enough for the State to show that the Defendant has probably guilty. It's not over yet. On the other hand, there are very few things in this world that we know with absolute certainty. The State does not have to overcome every possible doubt. The State must prove each element of the crimes by evidence that firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance. If you find that there is a reasonable doubt that the Defendant is guilty of the crimes, you must give the Defendant the benefit of the doubt and find the Defendant not guilty of the crime under consideration. That is the entire definition of reasonable doubt in Indiana that a jury will ultimately hear. Now, Juror Number 3, having heard that, does that change your opinion about the gravity of that –

JUROR 3: Not really.

Q -- proof beyond a reasonable doubt? Okay. It says there that you must – that if you think they're probably guilty – and I'm not saying that's what you'll conclude here, but if you did think, "I think he's probably guilty," that that's not enough. Is that kind of a mind blower? Or not?

JUROR 3: Yes, it is.

Q It is? Why is that?

JUROR 3: Not real sure.

Q And I'm sorry, I'm not picking on you, but we have – okay, here's the thing that you guys may not know, there's – we have to pick two people, and I'm gonna focus kind of on the people that – 'cause it goes from this way – and I'm not trying to ignore people, but I really need to focus on the people I need to focus on. And the other thing I want to talk about in a minute is alternate jurors stuff, because that's what we're selecting is alternate jurors. Okay. So now, you have formed an opinion on this case, at least in your jury questionnaire; is that correct?

JUROR 54: (Responds by nodding head in the affirmative.)

Q Okay. Thank you. And, for the record, we're looking at – talking to Juror Number 54. Has – is that a pretty strong – it's a pretty strong opinion, at least in the questionnaire.

JUROR 54: Pretty strong opinion on that. I do have a friend in law enforcement and we have talked about it over the years; but, you know, in the state of Indiana, you're supposed to be innocent till proven guilty. You know, hearing some of the stuff that you've said, you know, I could be persuaded one way or the other if the evidence would prove it to me.

Q Okay. So you – in spite of what you said in your jury questionnaire, you think that you can be persuaded, you can keep an open mind?

JUROR 54: Yes. That's what we're called to do.

Q You know, I always run into the situation where the people say – may say something like that in the jury selection form, and then I talked to them and I say, "Man, I really want to believe him, because he seems like a reasonable

person." But you can understand why I have some trepidation?

JUROR 54: Yes. Well, and it's one of those, when you could fill that thing out, you're going, "I don't want to be on a jury, I don't want to be here for a month and a half or whatever it is to be on there." You know, I have a business that I'm running and I have four families that rely on me.

Q Yeah.

JUROR 54: You know, it all weighs your head, but when you're called to – we're called to be a servant of the state, so –

Q I appreciate that. And I guess, in the end, should I worry about you? 'Cause I'm a worrier.

JUROR 54: You probably should, then.

Q Okay.

JUROR 54: You probably should.

Q Can you be fair to the Defense? Do you think –

JUROR 54: Be fair to the Defense? Yes, you probably should.

Q Okay. I should be worried, is that what you said? Okay. Thank you, I appreciate that. And you, it seems to me like you're – with your family situation, that I'm just not gonna really ask a lot of questions; is that okay or you want me to ask you a lot of questions?

JUROR 40: Nope, that's fair.

Q Okay.

JUROR 40: Yep.

Q All right. I'm happy to ask questions if you want me to though.

JUROR 40: No thank you.

Q Okay. You'll pass on that. And then, you are concerned about your work.

JUROR 36: (Responds by nodding head in the affirmative.)

Q That's a tough thing. Do you like your job?

JUROR 36: Yeah. Yes, I do.

Q And is it – are they needing you? I mean –

JUROR 36: Yes.

Q Are you easily replaceable if you're not there? I don't think they can fire –

JUROR 36: No.

Q A lawyer should know this. I don't think they can fire you if you're on jury duty, but I could be wrong.

JUROR 36: I'm pretty important at my job.

Q Okay.

JUROR 36: I – they rely on me for quite a few things; so to replace me would be pretty hard for them, you know, based on, you know, what I do for my company, so –

Q Would that cause you to not be able – like could you – I don't know that you'd be able to do this, there's – I think there's a possibility you'd be able to work at night, like on a computer.

JUROR 36: No.

Q Not –

JUROR 36: No. No, I drive heavy equipment and I manage three different warehouses.

Q Wow. Okay.

JUROR 36: So –

Q Again, I mean, you seem like a reasonable guy, a fair guy that would be good potentially for a jury so, you know, I'd hate to lose you over a job, but I also

understand that, after six months of trying to find a good job –

JUROR 36: Yes.

Q -- you just don't think this is a good opportunity – it'd be an opportunity to lose a job that you really like, potentially?

JUROR 36: Right, yes.

Q Okay. Thank you. Now, nobody's talked to you. How are you doing?

JUROR 10: I'm here.

Q Are you ready to be on the hot seat?

JUROR 10: Sure.

Q Okay. When I read the proof beyond a reasonable doubt instruction in its entirety a moment ago, did you have any thoughts on that?

JUROR 10: Not particularly, no.

Q Okay.

JUROR 10: I think I understood it.

Q Okay. Did you – do you understand – do you feel like the – it's – the gravity of – the weight of that instruction?

JUROR 10: Yes.

Q Tell me why you think that instruction is weighty?

JUROR 10: I mean, it's really just because like I know – I wanna – I always want to – sorry, I'm not very good at public speaking.

Q No. I know, man. I hate to do this to you. I just really need – whoops – I really need you to just let me know what you're thinking.

JUROR 10: Yeah. I don't want to go in, like, assuming that he's guilty, and I want to always follow, you know, innocent until proven guilty and I don't want to make any assumptions until I see the evidence, you know.

Q So –

JUROR 10: And I would go off of the evidence that I see in the trial to, you know – if that's enough to go beyond reasonable doubt to me or if it's not enough.

Q I mean, he is innocent as he sits over there, that's the Constitution. Can you really believe that?

JUROR 10: Yeah.

Q Do you?

JUROR 10: Yes.

Q Okay. All right. What do you do for a living, if you don't mind me asking?

JUROR 10: I work for Fed Ex Ground, I'm an operations administrator.

Q Okay. And what about a month-long trial? Are you able to survive?

JUROR 10: I probably would be able to, but we are kind of heading into our peak season right now with Christmas and Black Friday coming up, so they might hurt me – hurt a little bit losing me, but –

Q Sounds like a couple good employees – sometimes it's the employer that loses out, not the juror, you know, here. So do you think you can be fair?

JUROR 10: Yes.

Q And what – I don't want to hear what you've heard, but have you heard about the case through media sources?

JUROR 10: Not much. All I've really seen are like headlines and stuff, I don't really go deep into the news articles and stuff, so I don't know any details or anything, but I have heard of it.

Q Thank you. I feel like I need to know more – a little bit more about you,

but I don't know really what to ask. Let me see what I got here. Oh, right here I got something. So in this case – I said this to the juries we were talking to yesterday – but we're going to go respectfully but aggressively after the police investigation and, you know, be critical of them and the job that we felt that they did or didn't do. Is that a problem for you?

JUROR 10: I don't believe so.

Q Some people are like – they are like, you know, police – if you start talking badly about the police – and I get it and I understand it and I don't have any issue with it, but I just need, again, to know from your heart if that is an issue.

JUROR 10: No, that's not me. I know there are bad apples in every group of people, so –

Q Thank you.

JUROR 10: -- I understand that.

Q Gonna go back to you now. What do you think about what I just said? I'm sorry, Juror Number 3.

JUROR 3: Three?

Q Yes.

JUROR 3: I'm for the police.

Q Sure. I am, too.

JUROR 3: My dad was in the Army and was a military police and I've always been taught to respect them.

Q So is that a concern that I should have from you that, if we are respectfully but strenuously, you know, contesting, you know, the investigation and maybe even individual performances, if you will, is that a concern?

JUROR 3: No.

Q Would you expect me to do that or not expect me to do that?

JUROR 3: Probably not.

Q Not? Okay. Man, just when I think I like you, then you're going back and forth. But you still could be fair, even if I did?

JUROR 3: Yes.

Q All right. We might as well get the – the other part of the thing is alternate jurors, we haven't really talked about that. This is where it really stinks, and maybe it does or maybe it doesn't, I guess I should ask your guys's opinion. And we'll get back to the back row, too, in a second, so everybody listen. Alternate jurors do not get to talk during deliberations, they do – they have to kind of go off the side and listen and they may want to be like, "Oh, I got something to say, please, look at that piece of evidence right here," but they cannot. And so you need to, like, look at yourselves and think, "Am I the type of person that can endure a month-long trial and not – and I really can just sit on my hands and not say anything?" What about – is that something you can do?

JUROR 3: Yes.

Q Is that – would that be –

JUROR 3: I'm more of a person not in front, I'd rather be in the back, kind of a follower, I guess.

Q Thank you for bringing that up, 'cause that's another thing I usually ask is are you more vocal? A follower? Kind of –

JUROR 3: Just a follower.

Q A follower?

JUROR 3: I'm not very vocal like this.

Q Okay.

JUROR 3: Being drilled –

Q You're doing fine.

JUROR 3: Being drilled questions.

Q I'm sorry, I don't mean to do that to you, I really –

JUROR 3: Stop it. No, I'm just kidding.

Q "Stop it," he says. All right. So what about you, do you – is that okay for you to like sit on your hands or are you gonna –

JUROR 10: I'd be okay.

Q Are you more of an opinionated person or a follower?

JUROR 10: More of a follower.

Q Okay.

JUROR 10: I don't really speak out much.

Q If somebody in the jury was saying something that you thought was inappropriate, like it violated the rules of the Court or the instructions of the Judge, would you be the type of person that could stand up and say, "You can't really say that"?

JUROR 10: Probably – I don't really feel comfortable doing that.

Q Okay.

JUROR 10: Just my personality.

Q Okay. All right.

JUROR 10: And just not really knowing the particular rules in a courtroom.

Q Okay. You're doing great. I know you're nervous, but it's fine. I mean, again, can you be fair and can you sit there and listen to the evidence without commenting on it when – during jury deliberations?

JUROR 10: I believe so.

Q Okay. So let's go back to the back row, and it seems like – I'm not gonna talk to you, because it seems like there might be a reason – you have reasons that you may not want to be on the jury; is that correct?

JUROR 24: Yes.

Q Is it okay if I don't ask you questions? Or would you want me to?

JUROR 24: Yeah.

Q You do want me to?

JUROR 24: No.

Q No. Okay. All right. And then, okay, I have a little concern with you, Juror Number 23. Do you know why?

JUROR 23: Why?

Q You don't know?

JUROR 23: No.

Q Well, your sister works at the jail.

JUROR 23: She does.

Q And I don't – is that – I don't know, maybe I shouldn't worry. Again, I'm a worrier. But should I worry about that, like in relation – like –

JUROR 23: We don't talk in-depth about situations or personnel, anything like that.

Q Okay. So you don't – like you don't know – there's no stories that she tells from the jail?

JUROR 23: No.

Q I'm sure there are.

JUROR 23: Well, I mean, there have been a handful of times, but

not on a regular basis.

Q And because – I guess that's a law enforcement position or a quasi-law enforcement position, do you find yourself leaning in that direction?

JUROR 23: No.

Q What about the question I asked related to aggressively, you know, critiquing, being critical of the – of police in this case, would that concern you, knowing that your sister or any other people that you know that are in law enforcement?

JUROR 23: I would say I'm neutral.

Q Neutral?

JUROR 23: Yeah.

Q Okay. What about the alternate juror situation, how do you – you able to kind of sit there and listen or is that gonna be difficult?

JUROR 23: I think it would be difficult, yeah.

Q Okay. I mean, if the Judge instructs you to do it, would you be able to do it?

JUROR 23: Yeah.

Q Do you think you might be pointing your head in the direction of some evidence that you want everybody to look at?

JUROR 23: It would be difficult, yeah.

Q Okay. I think it would be difficult, as well. Is – and I just want to be clear: Do you think that you could get away for the time, maybe a month, if it takes that long?

JUROR 23: If I had to do it, I would.

Q Okay.

JUROR 23: As he said, I feel like that's my duty, but I would prefer to, obviously, be with my family.

Q Okay. Thank you. And I guess the last question before I move on is – and I need you to speak from your heart – and a couple questions – the innocent until proven guilty, he sits there in innocent man; do you really believe that?

JUROR 23: I do.

Q Do you?

JUROR 23: Yeah.

Q Okay. And can you be fair and will you be fair if you're selected?

JUROR 23: Yeah.

Q You believe that?

JUROR 23: Um-hmm. (Affirmative response.)

Q Okay. It's serious business here?

JUROR 23: Yes, yeah.

Q Okay. All right. Juror Number 25, is that correct? I appreciate what you said about the photographs and any other type of evidence that might be upsetting. Is that – how much of a concern is that for you?

JUROR 25: I was diagnosed with PTSD related to an event that was – that involved graphic images.

Q Okay. I'm sorry about that, and I appreciate you letting me know that. Is that – should that be something that I, as a – the defense lawyer, and we, as the defense team over here, should be concerned about for our client, Rick?

JUROR 25: Possibly.

Q Okay.

JUROR 25: I'm almost more – I'm more concerned – I think I would

try to be fair, but I'm more concerned of my own mental health.

Q Okay. I appreciate that. And because of that concern, do you think that you – and again, I know these are such unfair questions, I get it, but man, it's such serious stuff. I mean, do you think you can be fair knowing what life experiences you're bringing to the table here and knowing what kind of case it is?

JUROR 25: Yeah.

Q Okay.

JUROR 25: Yeah. I just worry about my constant anxiety –

Q Okay.

JUROR 25: -- or my ability to –

Q Okay. And was there any other issues that you had? I can – the other ones, they kind of got hashed out, if I remember correctly.

JUROR 25: Yeah. Some scheduling conflicts, but –

Q Okay. It seems to me like you're gonna be – it seems like you just need - yeah, in five days, you're –

JUROR 12: Yeah.

Q What country are you going to?

JUROR 12: Saudi Arabia.

Q Woah. Okay. Cool. And that would – yes.

JUROR 35: I'm selected?

Q Yes, you're up. You're ready? You ready to get up in that seat there? Is there anything that I've talked about – 'cause we're getting close to the end here. Is there anything that I talked about among everybody else that you have thoughts on?

JUROR 35: Reasonable doubt.

Q Oh, wait a minute, you're the guy that's already said you're out.

JUROR 35: Oh, I'm out.

Q But you still – well, if you want something to say, I'll give you a chance to say it.

JUROR 35: (Responds by shaking head in the negative.)

Q No? You're good? Okay. And what about you, sir, anything that – 'cause we're getting near the end here. Is there anything – I'm a little – alternative – alternate juror, do you think you can do that? Would that be difficult for you?

JUROR 51: I don't think it would be.

Q Okay. Innocent as he sits over there until the State puts its case together?

JUROR 51: Two sides, I have to hear both sides –

Q Okay.

JUROR 51: -- before I can make a decision.

Q In your jury questionnaire, you said you had opinions based upon media. Is it something that either side should worry about in terms of the starting positions?

JUROR 51: Just in – I didn't know what the – you know, when it first started out, you heard a lot of things.

Q Yeah.

JUROR 51: So I still have those things and, you know, I don't know, you know, if I'd be able to block that out, I really don't.

Q Oh, you don't know if you could block it out? And I don't want to get into what you think you could or couldn't block out, but does that – it wouldn't be fair to either side, And I want them to have a fair trial, too, and – if – no matter

what your position is, can you be fair to both sides based upon the media that you've encountered?

JUROR 51: Honestly, I don't think I could. I don't know.

Q Okay.

JUROR 51: From what I've heard.

Q From – you formed an opinion and it's gonna be hard to get away from that?

JUROR 51: Uh-huh. (Affirmative response)

Q Okay. I appreciate that. I think I might be done here, just let me – I do – famous last words of lawyers, as Mr. McLeland said a minute ago. It's hard – you say you have one – no more questions and you do. Log – I just want to say are you a logic and reason-based person or more of an emotional person? And I know there's probably a little mixing of the two, but if you had to choose one or the other, which do you think you would be, Juror Number 3?

JUROR 3: Logic.

Q Logic? Reason? I don't know what to do about you, you're very difficult to figure out. What about you, are you logic and reason?

JUROR 54: Logic.

Q Logic? What about you?

JUROR 10: Logic.

Q I mean, nobody wants to say they're emotional. Is there anybody here that thinks you're more of an emotional than logic?

JUROR 24: (Responds by raising hand.)

Q One here? Okay. Thank you. You did it, you did answer one of my questions, so thank you. Can you all wait – if you get on, even as an alternate,

can you wait until we get our case on? 'Cause we have a case. Can you really wait?

JUROR 36: (Responds by nodding head in the affirmative.)

Q Thank you.

MR. ROZZI: Andy.

Q Oh, hold on. And they've asked, 'cause on – I missed something on your jury questionnaire. It says that you have – you indicated that you had made up your mind on the case; is that correct?

JUROR 36: Um-hmm. (Affirmative response)

Q Okay. I'm sorry that I didn't get to hear that. Is that something that's not gonna be able to be changed?

JUROR 36: No.

MR. BALDWIN: Okay. Thank you, appreciate it.

THE COURT: Counsel may approach when you're ready.

(Sidebar conference conducted.)

THE COURT: Okay. All right. You agree on cause on seat 1 based on his – I'm assuming his memory and he can't focus.

MR. MCLELAND: Yeah.

THE COURT: The Defendant is asking for cause on seat 3. I'm sorry, what is the cause on seat 3?

MR. BALDWIN: He said at the very end he said he did not think he could be fair to the Defense.

THE COURT: Oh, I'm sorry, I didn't hear him say that at all.

MR. MCLELAND: I didn't either, Judge. I'm sorry. I thought that he actually said that he could be fair, that he said he didn't want to be on the

jury at first, but now he's kind of considered it.

MR. BALDWIN: I'm happy to have – to ask – I'm telling you what he said, 'cause that's the last thing I said to him, I said, "So do you think you could be fair to the Defense?" He said, "No, I don't think so."

THE COURT: Well, you're an officer of the court, so I have to assume you're telling me the truth. I didn't hear him say that.

MR. BALDWIN: Okay.

THE COURT: But you're telling me that that's what he said?

MR. BALDWIN: Yeah, and – yes.

MR. MCLELAND: So number 3 for cause?

THE COURT: So I'll take him for cause, as well. And you agree for cause on seat 4; you agree on cause on seat 5; and you agree on cause on seat 7. The State is asking for cause on seat 8.

MR. MCLELAND: She's asking – at the end, she said that she's gonna hold the State to beyond all doubt, so that's my concern about that. She wanted 100 percent beyond all doubt, and then, when I asked her if she could set that aside, she said maybe.

MR. BALDWIN: I didn't hear that, but as an officer of the court, I believe him.

THE COURT: Yeah. I'll take her for cause. The State is asking for cause on seat 9.

MR. MCLELAND: That – she (inaudible) when he was asking that, but I think she said that her PTSD – she had PTSD from maybe seeing photos before, but I couldn't hear that well.

THE COURT: I couldn't hear that part.

MR. MCLELAND: Yeah. I couldn't –

MR. BALDWIN: I don't disagree with him on that one. I'm concerned about her.

THE COURT: Cause on her.

MR. MCLELAND: And that's (inaudible).

THE COURT: And you agree for cause on 10; and you agree for cause on 11; and you agree on – what is the cause on 12?

MR. BALDWIN: I'm sorry?

THE COURT: I don't see it.

MR. BALDWIN: Yeah, at the very end, he said he could not be – he said he – the media that he watched, he could not – he didn't tell which side he was on, but he said he could not be fair.

MR. MCLELAND: That's what I heard, too, Judge.

THE COURT: Okay. I'll take him, but that's not the standard. The standard is can you set aside what you read or heard in the media and listened to the evidence.

MR. BALDWIN: Yeah, you're right.

THE COURT: I know I'm right. Thank you.

MR. MCLELAND: But either way, he's stuck, he's not on the jury?

THE COURT: I'll take him for cause. And then, Defendant is taking seat 2. So the only one we got is seat 10.

MR. MCLELAND: Seat 10.

THE COURT: Then, we gotta break, we gotta break for lunch. I'm not gonna do it again like we did yesterday. So we'll keep him, he is your alternate 3, and then break for lunch.

(Sidebar conference concluded.)

THE COURT: All right. All right, we're gonna do this the easy way, rather than addressing each of you. One of you has been selected to serve and that is Juror 10 in seat 6, you have been selected to serve. Please do not speak to anyone about this case. You are free to tell your family and friends that you may have been selected to serve as a juror, but that is the extent of what it is that you may share with them. Please avoid all media coverage about this case. Please don't conduct any research on your own about this case. Please don't post anyone's remarks – don't post any remarks about this case on any social media platform and, please, don't review any social media platform. When we reconvene later on this week, I will swear you in as the jury and we will begin our travel to Delphi, Indiana. You'll be getting a phone call later on in the week. The balance of you have been excused, but I would ask that you all go through this door. And Corporal Tinkel will speak with you, Juror 10, and give you – the rest of you the way to get out of the building. So thank you. All right. Well, ladies and gentlemen, we still are not done selecting our jurors, but it is now one o'clock, and I'm not doing what I did yesterday, which has worked through the entire day, so we're gonna break for lunch. Please avoid all media coverage. Please don't talk to anybody about this case. Please don't do any research about the case. And if you would, please, report back to the seats that you've already been assigned to, which you've been very gracious about maintaining, if you would please report back in here by two o'clock. As soon as we know everybody's back and ready to go, we'll get started. All right. Let's reconvene at two o'clock, please. And there's a decorum order in place for everybody in the courtroom. Those of you in the gallery, no eating, no drinking, and I've been watching people

eating and I've been watching people drinking. This is a historic building, the Preservation Trust has spent a lot of money replacing all of the carpet and all of the chairs out there. Please read the decorum order. We are in recess. Jodie, you can off the record.

(Off record at 1:11 p.m.)

(On record at 2:06 p.m.)

THE COURT: Okay. We're back on the record.

THE BAILIFF: You ready?

THE COURT: We are ready.

THE BAILIFF: All right. Juror 4, seat 1. Juror 6, seat 2. Juror 50, seat 3. Juror 38, seat 4. Juror 44, seat 5. Juror 18, seat 6. Juror 9, seat 7. Juror 17, seat 8. Juror 13, seat 9. Juror 22, seat 10. Juror 33, seat 11. And Juror 20, seat 12.

THE COURT: Thank you, Jason.

VOIR DIRE BY THE COURT

ANSWERS BY POTENTIAL JURORS.

Q Okay. Thank you for your patience, ladies and gentlemen. Juror 4, did you have any responses to any of my questions?

JUROR 4: Yes. I just have three small children at home, ages 5, 6, and 11.

Q Five, six, and 11?

JUROR 4: Yes.

Q Okay. And if you were called on to serve, could you make arrangements for your children?

JUROR 4: It would be very hard.

Q Okay. Are you a single parent or do you have a partner?

JUROR 4: I have a partner.

Q Okay. So could your partner help?

JUROR 4: He works, he works construction, so it's never a time when he gets to get off and go in.

Q Okay. And you heard me explaining the whole sequestering, and that's what we're talking about here, as far as you're concerned, the three small children?

JUROR 4: Yes.

Q Okay. Any other concerns that you have?

JUROR 4: No.

Q Okay. Juror 6, did you have any responses to any of my questions?

JUROR 6: (Responds by shaking head in the negative.)

Q And you've heard me explaining the sequestering process; do you have any concerns about that?

JUROR 6: No.

Q Okay. Juror 50, did you have any responses to my questions?

JUROR 50: I do, Your Honor.

Q And what are your responses?

JUROR 50: I have a few of them. My husband has MS, and I primarily take care of our home and a lot of responsibility there, so to be gone for that long would be a very big difficulty, 'cause no one could step in to – I don't know of anyone I could call on.

Q Okay. So you don't have any family or friends in town that you could rely upon?

JUROR 50: Not that could come in for that period of time, no.

Q Okay.

JUROR 50: And he's not totally dependent upon me, but there's a lot of responsibility on me.

Q Okay.

JUROR 50: Yeah.

Q And any other responses?

JUROR 50: My husband's family are all from this area, and so there's just been constant conversation about this trial for the last few years. So I just felt the obligation to let that be known.

Q Oh, I'm glad that you did.

JUROR 50: Yeah, yeah.

Q Have you participated in any of those conversations?

JUROR 50: I mean, I certainly was there and listened.

Q Okay. So as people are talking?

JUROR 50: Yes, yes, but they know people, they – my husband's dad worked with a family member of the girls, and so there was – there's a lot of interest and a lot of conversation over the years about this trial.

Q Okay. So based on all of those conversations and interest, have you formed an opinion about this case?

JUROR 50: No, I would not say I've formed my own opinion.

Q Okay. So you could set aside all of the conversations – if you were selected to serve, you could –

JUROR 50: I –

Q -- set aside all of those conversations and make a decision on the evidence

that you see and hear in the courtroom?

JUROR 50: I believe that I can do that, yes –

Q Okay.

JUROR 50: -- absolutely.

Q Okay. Any other concerns?

JUROR 50: Yes. And I apologize –

Q No, no, no.

JUROR 50: -- I'm not trying to give a laundry list here.

Q Let's hear it.

JUROR 50: I have a daughter who was assaulted by gunpoint, and so I'm just a little worried about the images I might see.

Q Okay, okay. And understanding that this might present a concern for you, could you set that aside and just be objective about the evidence that you're seeing and hearing and put your daughter's situation out of your mind?

JUROR 50: Yeah. It's not the evidence, it would just be having to see images.

Q Okay. Anything else?

JUROR 50: This is a self-centered one, but my daughter lives in Hawaii and she's in her third trimester and coming home for a baby shower I'm throwing for her next week.

Q Do you need a tissue?

JUROR 50: (Response by shaking head in the negative.)

Q Okay. Well, congratulations.

JUROR 50: Thank you.

Q You're gonna have a grandbaby. Okay.

JUROR 50: But that's it, I'm done now.

Q Okay. So knowing that this is – that, you know, if you were called on to serve, you would be missing that.

JUROR 50: Yeah.

Q Okay. And is that gonna cause you some heartache?

JUROR 50: Oh, you betcha.

Q Okay. Okay. Anything else that we need to talk about?

JUROR 50: No.

Q Okay. Thank you for sharing all of that with me. Juror 38, did you have any responses to any of my questions?

JUROR 38: I did. One is you asked about knowledge of the trial. I have been involved in a lot of the groups on Facebook and Reddit and listen to podcasts, and I have formed an opinion about the –

Q Okay. So you've had conversations and you've been listening to things?

JUROR 38: Yes.

Q And you realize none of that is evidence?

JUROR 38: I understand.

Q Okay. Whatever the podcasters are saying, whatever the Youtubers and the media are saying, that is not the evidence in this case.

JUROR 38: I understand.

Q Okay. Can you set all of that information aside and make a decision on the evidence, not on all of that other stuff?

JUROR 38: It would be difficult.

Q Okay. What else?

JUROR 38: I have a lot of friends that are in law enforcement.

Q Okay. And do you speak with them about their work?

JUROR 38: I do.

Q Okay. Anything about their work or those conversations that would affect your ability to be fair and impartial?

JUROR 38: I don't believe so.

Q Okay. And what – anything else?

JUROR 38: Yes. I'm the sole caregiver and transporter for my sister, who is going through chemotherapy for breast cancer right now.

Q Okay. And if you were called on to serve, would you be able to make arrangements for your sister?

JUROR 38: I was attempting to do that and it is proving to be very difficult to do so.

Q Okay. But if you were given some time and were selected, you might be able to make those arrangements?

JUROR 38: Possibly –

Q Possibly.

JUROR 38: -- but it would be difficult.

Q Okay. Anything else that we need to talk about?

JUROR 38: Yes. My sisters and I both were victims of child abuse as a youngster, and the nature of this crime kind of speaks to my heart.

Q Okay. And would you be able to set your own personal situation and your sister's situation aside and listen to the evidence objectively?

JUROR 38: I honestly don't know.

Q Okay. And you've heard me discussing the sequestering process.

JUROR 38: I did.

Q The things that you've already shared, is there anything else about that process that would be difficult?

JUROR 38: Just I really am the sole caregiver for my sister. I am a nurse by trade and I just would feel really – I want to be with her right now.

Q Gotcha. Thank you, I appreciate that. Juror 44, did you have any responses to any of my questions?

JUROR 44: No.

Q And you heard me explaining the process of sequestering; does that cause you any concerns?

JUROR 44: No.

Q Juror 18, did you have any responses to any of my questions?

JUROR 18: No.

Q And you heard me discussing the possibility of sequestering; does that cause you any concern?

JUROR 18: Yeah. I'd love to do it, but I'm the only person that drives my family, and I have to take care of my wife, and 30 days is a long time. So it wouldn't be a vacation for me to be away from my wife.

Q Okay. Any other concerns you need to share?

JUROR 18: I really don't want to be part of this case.

Q I'm sorry?

JUROR 18: I don't want to be part of this case.

Q Okay.

JUROR 18: I didn't know what this all was about.

Q Okay. Well, that's perfect. We don't want anybody that knows stuff about it. All right. Juror 9, did you have any responses to any of my questions?

JUROR 9: I've got a high school girl at home, I'm a guardian –

Q Okay.

JUROR 9: -- for her.

Q And if you were selected to serve, would you be able to make arrangements for her?

JUROR 9: I could try.

Q Okay. Any other responses to my questions?

JUROR 9: No.

Q Okay. And you heard me discussing the process of being sequestered; any concerns other than your high school girl at home?

JUROR 9: That's it.

Q Okay. Thank you. Juror 17, did you have any responses to any of my questions?

JUROR 17: No.

Q And you heard me discussing the sequestering process; do you have any concerns about that?

JUROR 17: No.

Q Okay. Juror 13, any responses to any of my questions, sir?

JUROR 13: I have a small self-storage management company and it's due to be – this new facility is due to be built this coming month and I'm the only one to run it, so it will be difficult for me to manage that –

Q Okay.

JUROR 13: -- from there.

Q And if you were selected to serve, would there be somebody that you could make arrangements with for this company?

JUROR 13: I would have to figure that out.

Q Okay. But you could possibly figure that out?

JUROR 13: Possibly.

Q Possibly. Okay. And any other responses?

JUROR 13: No, ma'am.

Q And you heard my discussion about being sequestered; do you have any specific concerns about that?

JUROR 13: No.

Q Okay. Juror 22, did you have any responses to my questions?

JUROR 22: Yes. My wife and I are both employed by the State.

Q Employed by the State?

JUROR 22: By the State, yes.

Q Okay. And you understand that the State is a party to this lawsuit. Is there anything about your employment or your wife's employment that would affect your abilities to be fair and impartial?

JUROR 22: My wife works for DCS –

Q Okay.

JUROR 22: -- so it would be difficult.

Q Okay. And what about – what do you do?

JUROR 22: I'm a high school teacher.

Q Oh, okay. Okay. All right. Any other responses to my questions?

JUROR 22: No, I think that's it, Your Honor.

Q Okay. And you heard me with the whole idea about being sequestered; other than the obvious concerns that we would all have, do you have any specific concerns about that?

JUROR 22: No.

Q Okay. Juror 33, did you have any responses to my questions?

JUROR 33: Just that my family's been following the case for a long time. I feel like I have formed an opinion on it –

Q Okay.

JUROR 33: -- that I feel like it would affect me.

Q All right. If you – okay. So your family's been following it in the media?

JUROR 33: Yeah, from the beginning.

Q Okay. So without going into what you've read or heard, you indicated you have already formed an opinion.

JUROR 33: Correct.

Q All right. Can you set that opinion aside and ignore the media and just make a decision on what you see and hear in the courtroom?

JUROR 33: Honestly, no.

Q Okay. And you heard me discussing the sequestering process; do you have any concerns with that?

JUROR 33: No.

Q Okay. And, Juror 20, did you have any responses to my questions?

JUROR 20: Yes, the law enforcement, I have multiple friends.

Q Friends in law enforcement? Do you speak with them about their work?

JUROR 20: On occasion.

Q Okay. Anything about their work or those conversations that would affect your ability to be fair?

JUROR 20: No.

Q Okay. Any other responses?

JUROR 20: I have five children. I'm the sole provider for most of the – not provider, but my husband works swing shift, so it would be very difficult for me to be away from them for that amount of time.

Q Okay.

JUROR 20: (Inaudible)

Q If you were called upon to serve, would you be able to make arrangements?

JUROR 20: I'm honestly not sure that I could for that amount of time.

Q I can't hear you.

JUROR 20: I'm honestly not sure that I could –

Q Okay.

JUROR 20: -- for that length of time.

Q Okay. And you heard my comments about being sequestered; other than the obvious concerns that we would all have, do you have any specific concerns about that, other than the children?

JUROR 20: Just the – mainly the children.

THE COURT: Okay. All right. Thank you. Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

VOIR DIRE BY THE STATE – MR. MCLELAND

ANSWERS BY POTENTIAL JURORS.

Q Ladies and gentlemen, good afternoon. Who's nervous to be here? You kind of heard me go through this a couple times, but – so it'll be quicker. But like I said, this is our chance to talk to you – well, like I've said a couple times, this is our chance to talk to you, to get to know you a little bit better, to make sure you're good for this trial. So a few things I want to go over first are just

some of the things the Judge touched on, and I'm gonna start – Juror Number 4, you said you had three children at home?

JUROR 4: Um-hmm. (Affirmative response)

Q And if you're selected as a juror – I didn't hear your answer – would you be able to find –

JUROR 4: It'd be difficult –

Q Okay.

JUROR 4: -- to find somebody to – for a whole month to take care of three children.

Q Do you have any ideas lined up of who you would get to be able to care for the children?

JUROR 4: I only have one person that I can think of and she's disabled, so I don't even know if that's possible.

Q Right. If –

JUROR 4: That'd be really hard on her.

Q If you are selected as a juror, is your mind gonna be focused on where the three children are at, as opposed to what's going on here in court?

JUROR 4: Probably what's going on at court.

Q Okay.

JUROR 4: I wouldn't be – they're not newborns, so –

Q Okay. So you can set that stuff aside and be able to focus on what's going on in court?

JUROR 4: Yeah.

Q Okay. All right. Perfect. Ma'am, you talked, Number 50, the stuff, your husband with MS. Were you having some health issues, as well? I thought on

your questionnaire that it said that you may have been dealing with some health issues, as well.

JUROR 50: Yeah. I completed treatment for breast cancer this summer and I have lupus.

Q Okay. Do you have follow-up appointments to go to in regards to that, as well?

JUROR 50: No.

Q Okay. So you're done with that, that's good. Congratulations.

JUROR 50: Thank you.

Q But with your husband's condition, MS, and you being the primary caregiver for him, is that something that is – if you're selected as a juror, are you gonna be thinking about him at home, as opposed to paying attention to what's going on here in court?

JUROR 50: I think that while I'm in court, I would be able to pay attention to what's going on; but I think the moment it's done, I'm gonna be focused on the other issues.

Q And the Judge has said with prior jurors that you'll have an opportunity to call home at night and possibly a family day on Sunday. Does that alleviate some of your concerns?

JUROR 50: It doesn't on his account, because it doesn't eliminate the, you know, the –

Q Sure.

JUROR 50: -- the role that I play.

Q Sure. Any other concerns you have about being a juror?

JUROR 50: Only what I shared to the Judge a few moments ago.

Q Okay. All right.

JUROR 50: Yeah.

Q Ma'am, Number 38, you said you're the primary caregiver for your sister I believe, and she's going through breast cancer now.

JUROR 38: Yes.

Q Deepest sympathies. I have a close family member doing the same thing, and so I know the struggles with that. Do you think, with those things you have going on with your sister, are you gonna be more worried about, I guess, the care of your sister, as opposed to paying attention to what's going on in court here today?

JUROR 38: Yes.

Q Okay. Is that gonna distract you to the point where you can't focus on the testimony and evidence that we present?

JUROR 38: I honestly don't know the answer to that.

Q Okay. Fair enough. You also stated that you formed an opinion already before you came into court today.

JUROR 38: I have.

Q And an opinion based on what you've seen and heard in the media and on online groups I think –

JUROR 38: Yes.

Q -- and stuff like that?

JUROR 38: Reddit, Facebook, podcasts.

Q Are you willing to set aside that opinion and form an opinion based on only what you see in court?

JUROR 38: I would love to say yes, but I'm not sure that I can.

Q Can you forget all that stuff that you heard on –

JUROR 38: Again, I would love to say yes, but I'm not sure that I can.

Q Do you have doubts that you'll be able to do that?

JUROR 38: Yes, I do.

Q Okay. I appreciate you being honest. I mean, I think it would be hard for any person –

JUROR 38: I have formed a pretty solid opinion.

Q Pretty solid opinion?

JUROR 38: Yep.

Q Okay. Well, let me ask this question – it's probably an unfair question, but I'm gonna ask you – is there anything that would change your mind at this point?

JUROR 38: No.

Q Okay. Thank you for being honest. Thank you, I appreciate it. Sir on the end, Number 18, you talked about the stuff at home. If you – or being away from your wife. If you are selected as a juror, are you gonna be able to put that out of your mind and focus on what's going on in court?

JUROR 18: No.

Q Okay. And you said you just don't want to be a juror on this case?

JUROR 18: Yeah. My wife knows about it, and then I told her not to tell me, and yeah, I do not want to be part of this case.

Q Okay. Has your wife told you about this case or what she knows about the case?

JUROR 18: No. I told her not to.

Q Okay.

JUROR 18: She said I won't like it, and she was right.

Q Okay. All right. All right. Is there anybody else who doesn't want to be a juror on this case? Okay. Well, I guess like folks from the back row. Ma'am, anything different besides what you told the Judge, that you have five children and it would be difficult to get their – to get care for them? Is there anything else besides what you told the Court that makes you not want to be a juror in this case?

JUROR 20: Given that I have two daughters, I think I already have biases.

Q Okay. Have you formed an opinion yet as to the guilt or innocence of Mr. Allen?

JUROR 20: Not strongly.

Q Okay. Was there somebody else that raised their hand in the back? I know the Judge talked to a couple people. Sir, your wife's with DCS. She is an attorney with DCS; is that right?

JUROR 22: (Responds by nodding head in the affirmative.)

Q And has she talked to you about the case?

JUROR 22: We have had discussions about it.

Q Sure. Have you formed an opinion about the case yet?

JUROR 22: No.

Q Okay. So she hasn't been able to sway you one way or the other with her conversations with you?

JUROR 22: Before I got into education, I was a newspaper guy –

Q Okay.

JUROR 22: -- and I try to stay as neutral as possible.

Q All right. Fair enough. I think that's everybody. Oh, ma'am, Number 17, I – we have your questionnaires, if you didn't know this already, and so we know a little bit about you from the questionnaires; but ma'am, one of the – Number 17, you talked about that you did something with voting, you worked the polls maybe or something? Are you still doing that?

JUROR 17: I'm scheduled to work the polls.

Q Okay. Is that something that you do through the State of Indiana or is that through a different kind of agency?

JUROR 17: You know, I don't know.

Q Okay.

JUROR 17: I think – I'm thinking it's Allen County, but I'm not sure.

Q Okay. It's here in Allen County is where you work the polls?

JUROR 17: It is.

Q Okay. All right. But you don't know of any conflict with you working the polls and you being a juror on this case?

JUROR 17: No. (Inaudible)

Q Okay. All right. I think that – I think I've covered everything. I want to kind of move on. We, the State of Indiana, have charged Mr. Allen with four counts of murder, and you've heard me talk about those; and I want to talk a little bit about just the charge of murder, not what we have charged against Mr. Allen. And so I want to talk to Number 50, ma'am, you hear murder, you've heard everybody say they think of death, bad crime. What kind of evidence would you expect to see?

JUROR 50: There wouldn't be any one specific thing, but, you know, whether there be testimony of people that witnessed it, the weapon that was used or the meth – you know, if there was a way of showing that, if there's fingerprints our DNA, very similar to some of the other answers, but it wouldn't need to be all of those, but there would just need to be some piece of evidence that would convince me that –

Q So you can't point to a specific piece of evidence, but it – there would need to be something that convinces you?

JUROR 50: Yeah. I mean, yeah, it could be – I mean, 'cause usually you don't have all of those things appear or it'd be –

Q Sure.

JUROR 50: -- much easier to do the job I bet.

Q Sure. Like on *CSI*, where they have everything.

JUROR 50: Yeah.

Q I mean, does anybody expect there to be – for a prosecutor to have everything in every case? Does anybody expect that, like they do on *CSI*? They have every piece of evidence possible; right? DNA, murder weapon, everything. Does anybody expect that? Does anybody expect this to be like they portray in Hollywood?

A (No response or indication from any potential juror.)

Q Okay. Ma'am, Number 44, what do you expect to see? What kind of evidence do you expect to see in a murder charge?

JUROR 44: Kind of piggybacking off what she said, just different – like a weapon or different testimony, stuff like that.

Q What about DNA?

JUROR 44: I mean, if it applies, then yeah, I would say that, as well.

Q Is there anybody here that expects there to be DNA in every crime?

A (No response or indication from any potential juror.)

Q Is there anybody here that believes that you leave DNA everywhere you go? Like if I touch this, is there – is my DNA on there now?

JUROR 38: I kind of believe it.

Q You kind of believe that, ma'am?

JUROR 38: Yeah.

Q Okay. Number 38, you kind of believe that. Anybody else agree with her, even just a little bit, that I've touched this table, my DNA is now here?

A (No response or indication from any potential juror.)

Q That you're sitting in that seat, your DNA is now there?

A (No response or indication from any potential juror.)

Q Nobody else, just you?

JUROR 38: Hey.

Q That's okay.

JUROR 38: Whatever.

Q That's all right. Okay. Any other evidence someone would expect to see in a murder charge that maybe we haven't talked about or one of the prior jurors hasn't talked about? Ma'am, yes, Number 4. Sorry, I gotta call you by the numbers, 'cause I don't know your names, so Number 4, yes, ma'am.

JUROR 17: Cell phone.

Q Cell phone data.

JUROR 17: Text messages.

Q Text messages.

JUROR 17: I don't know, phone calls.

Q Phone calls.

JUROR 17: I didn't hear anybody say nothing about that.

Q Okay. That's a good one, good one. Anybody else agree with that? Cell phone, we all have cell phones now; right? We all carry them with us, they're kind of – anybody get anxious if they leave their cell phone at home when they leave?

A (Some potential jurors respond by raising hands.)

Q You probably all should raise your hands, I think that's about everybody. It's a lifeline that we have to carry with us it seems like everywhere. Okay. Anything else? Anything else you can think of?

A (No response or indication from any potential juror.)

Q Okay. Well, as I've said before, the State has to use evidence, evidence and testimony, to prove to you each element of each offense beyond a reasonable doubt. What does "beyond a reasonable doubt mean"? It's different to every person; all right? You have to use your common sense to evaluate the evidence to be firmly convinced. And what the rule says, in part, is that proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. That's part of the rule. The Defense is probably gonna read the whole rule, and you've heard them read it a couple times today, but part of the rule is firmly convinced, that you're firmly convinced that there's enough evidence for each element of each offense. And so I used the attorney example. So let me start with Number 13, sir, do you believe I'm an attorney?

JUROR 13: I do.

Q What are you basing that on?

JUROR 13: Where you're standing, the Judge let you in here –

Q Sure.

JUROR 13: -- and you've been giving a wonderful speech all day.

Q I appreciate that. Using your common sense to figure that out?

JUROR 13: Yes.

Q Using what you know in the real world and applying it to what you see here in court?

JUROR 13: Correct.

Q Can you do that during the trial?

JUROR 13: I could use common sense, yes.

Q Okay. That's the standard. And if you're firmly convinced, that's beyond a reasonable doubt; that's what the rule says, beyond a reasonable doubt is firmly convinced. Now, what I do for a living is an easy decision to make; right? Telling me, "Hey, Nick, I don't believe you're a lawyer," there's no consequence in that. There's no consequence in saying, "Hey, I do believe you're a lawyer." Deciding whether or not someone is guilty for murder is different; do you agree?

JUROR 13: Agree.

Q Do you think the burden should be higher in that instance? Do you think the burden should be higher in that instance? Do you think it should be beyond firmly convinced? Do you think it should be beyond all doubt?

JUROR 13: I think it should be higher, yes.

Q Okay. So you think it should be higher if it's a situation where the decision is more important? Is that fair?

JUROR 13: Fair, yep.

Q If the Judge tells you, “This is the rule, beyond a reasonable doubt means this”, can you set that aside and follow what she says?

JUROR 13: I can.

Q Okay. Who else agrees the burden should be higher in a murder? Let's pick on – okay, let’s – Number 44, you think it should be higher?

JUROR 44: I do, yeah.

Q Do you think it should be beyond all doubt?

JUROR 44: I don't – well, I don't think that anything can be beyond all doubt –

Q Okay.

JUROR 44: -- but I do think that, because you’re dealing with a human being, that it should be higher, yes.

Q What is beyond all doubt to you? Do you know anything that's beyond all that?

JUROR 44: Not off the top of my head, no, I can’t think of anything.

Q Okay. Something you saw with your own eyes –

JUROR 44: Yeah, something beyond a 100 percent –

Q -- probably convince you beyond all doubt; right? How did you get in the courtroom today? Walk in through that door?

JUROR 44: No.

Q Walk in that door?

JUROR 44: Yeah.

Q Beyond all doubt?

JUROR 44: Yeah.

Q ‘Cause you know you walked in that door; right?

JUROR 44: Yeah, yes.

Q So you don't think it should be that level, but you think it should be higher than firmly convinced?

JUROR 44: Yes.

Q Okay.

JUROR 44: Yeah.

Q Somebody else raised their hand, I don't know – ma'am, Number 17, think it should be higher?

JUROR 17: Than the example that you gave about yourself being an attorney, yes, I do.

Q Well, think the burden should be higher than beyond a reasonable doubt for murder?

JUROR 17: I would say yes, in considering what's at stake.

Q Okay. The example I gave about an attorney is just to show you that to be firmly convinced, you may not need a lot of evidence, you may be able to use some common sense, and we ask you to use your common sense to make a determination. I understand that deciding whether or not someone's guilty of murder's a different decision from the question I asked you of whether or not I'm an attorney. What I'm asking now is do you think that beyond a reasonable doubt level should be higher for murder? Should be beyond all doubt, like Number 44 says?

JUROR 17: I don't think that we would ever be able to get beyond all doubt.

Q Sure. Very few things – the rule will tell you very few things are beyond all doubt, the Judge will read that right in the rule, 'cause very few things are, things

we see with our own eyes, things that perhaps are on video that we can see with our own eyes, those are things that are beyond all doubt. So you don't think it should be – you don't think the burden should be that?

JUROR 17: Not beyond all doubt.

A Correct. And so if you – if the State proves each element beyond a reasonable doubt, and you're firmly convinced, are you able to enter guilty?

JUROR 17: Yeah.

Q Talk about witness testimony just briefly, probably gonna have a lot of the same answers that the jurors had; but, sir, Number 33, what kind of things do you look for to determine the credibility of a witness?

JUROR 33: Background, I guess what they do –

Q Sure.

JUROR 33: -- for occupation, and then I – it would be circumstantial on what I would believe he's saying.

Q If someone was a law enforcement officer – you talk about occupation. If someone was a law enforcement officer, would you give them more credibility simply because they're a law enforcement officer?

JUROR 33: I generally would give them more credibility.

Q Okay. Ma'am, Number 20, what about you? What kind of things are you gonna look for to determine whether or not a witness is credible?

JUROR 20: Probably experience and background.

Q Okay. I'm gonna have to ask you to speak up just a little bit, you're very soft spoken.

JUROR 20: Sorry.

Q Okay. If someone's a law enforcement officer, are you gonna give that

person more credibility simply because they're a law enforcement officer?

JUROR 20: I'd say generally, yes.

Q Generally, yes? Okay. Anybody else have anything different to look at when looking at – ma'am, I haven't talked to you, I'm sorry. Number 9, what kind of things are you gonna look at determining credibility of witness?

JUROR 9: Probably their education, too.

Q Okay. What about –

JUROR 9: Their experiences –

Q Sure.

JUROR 9: -- what they've seen, what they've encountered –

Q Sure.

JUROR 9: -- how they've addressed it, what is important to them.

Q What about an expert? If someone is up here and says, "I'm an expert"?

JUROR 9: Credentials.

Q The Defense talks about battle of the experts. What kind of things are you gonna look for? Credentials?

JUROR 9: Yes.

Q What do you mean by that?

JUROR 9: What is their expertise.

Q Okay.

JUROR 9: What are they pointing it on. Because there's so many different –

Q Sure, sure.

JUROR 9: -- people doing different specific things that help guide you –

Q Absolutely.

JUROR 9: -- in making your decision –

Q Absolutely.

JUROR 9: -- and your choice.

Q But if you had two experts giving you conflicting stories, how are you gonna determine who to believe?

JUROR 9: Probably looking at their credentials again.

Q Okay.

JUROR 9: You'd go back to (inaudible)

Q So it'd be education, experience, what they've done in the past, those –

JUROR 9: What did have their self involved in the case with, what did they get to decide, what did they get to do –

Q Sure.

JUROR 9: -- what did they share in –

Q Sure, sure.

JUROR 9: -- was there any bias –

Q Sure. Yeah, sure.

JUROR 9: -- can (inaudible).

Q Okay. Okay. All right. Anybody have any issues with passing judgment? I've talked about it at least three times. Does everybody know what I mean when I say passing judgment and that example I used when we talked about it? Does anybody have a problem with that? Sir, Number 6, any problems with passing judgment?

JUROR 6: No.

Q Okay. Anybody else have any issues, knowing that this is a murder

charge? Anybody have any issues with making a decision of something of this gravity?

A (No response or indication from any potential juror.)

Q Okay. All right. Anybody have a distrust for prosecutors, had a bad experience with a prosecutor in some county? I don't know if you've all always lived in Fort Wayne or Allen County, but any bad experiences with prosecutors?

A (No response or indication from any potential juror.)

Q Any bad experience with defense attorneys?

A (No response or indication from any potential juror.)

Q What about judges?

A (No response or indication from any potential juror.)

Q Okay. What about law enforcement? Yes, sir, Number 18.

JUROR 18: Yeah, I've had some bad experiences.

Q Okay. Those – I don't want to know about the experiences, but those bad experiences, are you going to hold –

JUROR 18: Yeah.

Q -- those against the law enforcement officer, if one testifies?

JUROR 18: Yeah, 'cause they spent like three hours illegally searching my car, yeah, I'd have an opinion.

Q So any – because of that experience you've had, if a law enforcement officer testifies, you're gonna think, "All right, this guy or girl, I don't believe them already because of the experience I had before"?

JUROR 18: Yeah.

Q Okay.

JUROR 18: Basically.

Q All right. Well, I appreciate you being honest. Anybody else in the same boat as Number 18?

A (No response or indication from any potential juror.)

Q Okay. I want to go back to beyond a reasonable doubt just briefly, something else I thought of. When it says beyond a reasonable doubt, reasonable doubt, so it can't be based on speculation, imagination, it can't be probably. Is everybody comfortable with that?

A (No response or indication from any potential juror.)

Q And I don't want to rehash or re-plow the same ground, but it's gotta be reasonable doubt. It's beyond a reasonable doubt. Is everybody comfortable with that?

A (No response or indication from any potential juror.)

Q And again, what the rule says is you're firmly convinced.

MR. MCLELAND: Okay. Thank you, Judge.

JUROR 50: Can I ask a question on that?

Q Sure.

JUROR 50: And I'm sorry, I just want to make sure –

MR. MCLELAND: Do I have any time left, Judge?

THE COURT: Yes, you do.

Q Okay. Go ahead, yes.

JUROR 50: So when you say – I just want to make sure I understand.

Q Sure.

JUROR 50: Reasonable doubt would say that, when you would listen to evidence, if you had a doubt but your doubt is not reasonable, meaning,

"Well, I didn't see this or, you know they didn't say this" – so you may have a doubt, but the doubt isn't reasonable, meaning there was enough evidence presented to have formed your thought, then one would move forward and say their verdict as guilty or not guilty. Am I understanding that?

Q I'm following you. Does everybody else follow her?

A (No response or indication from any potential juror.)

Q Okay. No? Okay. So let's talk about it.

JUROR 50: I'm one of those people that I don't do well on a test that says A, B, C, D, or E. I want to write out my answer, because I want to make sure; do you know what I'm saying?

Q Let's go to the attorney example, 'cause that's just an easy one that's on the top of my head right now. Let's say that you're not convinced I'm an attorney because somebody says, "Look, he could just be standing up there, he could have everybody buffaloed, he could have faked his license, he could have faked his ID, he could have faked all those things"; is it reasonable to believe that?

JUROR 50: No, it's not, but it's possible to believe that.

Q Possible –

JUROR 50: -- and that's what I was asking about.

Q -- but that's beyond all doubt.

JUROR 50: Right.

Q Right?

JUROR 50: That's what I was trying to –

Q That's beyond all doubt.

JUROR 50: Right.

Q You'd want to talk to the dean of my law school; right? The person who

issued my license in Indiana.

JUROR 50: Right.

Q I mean, that – reasonable doubt. If the explanation is unreasonable – right? –

JUROR 50: Yeah.

Q -- that, oh, I could have faked it, I could have – yes, it's possible I could have done all – and maybe that's a bad example, I don't know, it's just what's on top of my head right now –

JUROR 50: Yeah.

Q -- but yeah, that is – you know, if it's an unreasonable doubt, you know – how did you get in the courtroom today? How did you get in the courtroom today? Did you walk through those doors?

JUROR 50: I did.

Q Okay. I'm not firmly convinced. What if aliens came and dropped you off here? Is it reasonable to think that?

JUROR 50: Not in my world.

Q Yeah, right, that's right, using your common sense to say, "Look, it's not reasonable. That's not reasonable." Possible? I suppose, but again, not based on imagination, speculation, all those things.

JUROR 50: Yeah.

Q Must be firmly convinced. Everybody comfortable with that?

A (No response or indication from any potential juror.)

Q Those are probably bad examples, but I'm following you. I need to come up with a good analogy for that, 'cause I don't have one off the top of my head. But does that make more sense to you now, ma – gosh dang it, I hate these

numbers – Number 38, does that make more sense to you?

JUROR 38: Yes.

Q It can't be doubt based on something that's unreasonable? Okay. Any other question – that's a great question. Any other questions about anything that I've talked about all day? I do have one other question, sorry. Sir, Number 6, you're retired?

JUROR 6: Yes.

Q Where'd you retire from?

JUROR 6: Toyota Mackey.

Q What'd you do for them?

JUROR 6: Maintenance.

Q Okay. How long did you work there?

JUROR 6: Seven years.

Q And you're 75 years old?

JUROR 6: Yes.

Q Do you want to be a juror on this case?

JUROR 6: It's an obligation that I would probably take.

Q Okay. Any concerns about being a juror?

JUROR 6: No.

Q Okay. All right. You've been on the jury before; is that right?

JUROR 6: Yes.

Q I was kind of – I'm reading over some of your – and how was that experience for you?

JUROR 6: It was a hung jury.

Q Really?

JUROR 6: Yes.

Q A criminal case?

JUROR 6: A rape.

Q Okay. How long ago?

JUROR 6: Fifty years.

Q Holy cow. Here in Allen County?

JUROR 6: Michigan, Hillsdale County.

Q Okay. How was that experience?

JUROR 6: It was okay.

Q The deliberations, since you all couldn't agree, was that – how was that?

JUROR 6: I think it was 10 to 2.

Q Okay. Were you one of the holdouts, one of the 2, or one of the 10?

JUROR 6: One of the 2.

Q Okay. Although the – it was a good experience for you though otherwise?

JUROR 6: Yeah. Do you need a reason or –

Q I don't know that I want to know, but sure, go ahead, you can tell me.

JUROR 6: They – I had some people that I knew that were in the crowd coming up to tell me how guilty this guy was and all that while we were walking into the –

Q Oh, my gosh.

JUROR 6: -- box here, which shouldn't have happened –

Q Right.

JUROR 6: -- but the Defense attorney took and put the little girl on the stand dressed up like a Barbie doll and it just – everything looked so fake to start with and then, as they got into it more, they didn't have any proof.

Q Okay. So you were one of the two that were saying not guilty?

JUROR 6: Yes.

Q Okay. And the other ten were saying guilty?

JUROR 6: Yeah.

Q And you just didn't – you didn't believe the evidence and testimony you heard for the State to meet their burden?

JUROR 6: No.

Q Is that what I'm hearing?

JUROR 6: Yes.

Q Okay. Sorry.

JUROR 6: I didn't – it wasn't because of the way the girl was dressed or anything like that.

Q Sure.

JUROR 6: It was because I didn't feel that, for somebody getting charged with that crime, they should have more evidence to say he's guilty.

Q Right, right. Are you comfortable with the burden of proof being beyond a reasonable doubt? I mean, rape's a very serious charge, so is murder. Are you comfortable with the burden of proof being beyond a reasonable doubt or do you think it should be beyond all doubt?

JUROR 6: I think it should be beyond a reasonable doubt and needs carried out by the Court –

Q Okay.

JUROR 6: -- not by my thought or anybody else's really as far as how far should you go.

Q Sure, sure. So you think the Judge should be making that decision and

not a jury? Is that – did I miss it?

JUROR 6: I think the Judge is in control and she can keep it on line –

Q Okay.

JUROR 6: -- or, you know –

Q I'm not sure I follow you, but –

JUROR 6: -- nobody's going off on a rabbit trap –

Q Gotcha.

JUROR 6: -- and then pro – and swaying the other jurors just because they got – they can speak better than the other guy.

Q Okay. Okay, I think I'm with you. Any other concerns?

JUROR 6: No, I don't think so.

Q Okay.

JUROR 6: I can tell you why I think you're a lawyer.

Q Okay, go ahead. I've got a few – I got a minute I think left.

THE COURT: You do, you've got time.

JUROR 6: Give me a minute. Your demeanor –

Q Okay.

JUROR 6: -- the way you carry yourself –

Q Okay. I don't know if that's good or bad, but –

JUROR 6: No, it's good. And the man over there with the beard, he's the same way –

Q Okay.

JUROR 6: -- you can tell by his actions and attitude that he's a lawyer.

Q Okay. That's interesting. 've never heard that before. That's a good – I like it though. So yeah, okay. All right. Well, thank you.

MR. MCLELAND: Thank you, Judge.

THE COURT: Ms. Auger.

VOIR DIRE BY THE DEFENSE – MS. AUGER

ANSWERS BY POTENTIAL JURORS.

Q Good afternoon. My name is Jennifer Auger, I'm also one of the attorneys representing Mr. Allen, and I have done something – hold on – sorry about that. Okay. I have just a few questions, ladies and gentlemen –

COURT REPORTER: Do you have your microphone on?

MS. AUGER: Nope. Strike two.

Q At some point, I'll actually get to talk to you. Okay. There was a lot of talk a little bit – it doesn't quite fit in my pocket – a little – a lot of talk about the standard for reasonable doubt, and I want to read to you the whole thing, because we kind of got little bits and pieces. Sometimes that can be confusing. So the burden is upon the State to prove beyond a reasonable doubt that the Defendant is guilty of the crimes charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the Defendant's guilt, but it does not mean that the Defendant's guilt must be proved beyond all reasonable doubt. A reasonable doubt is a fair, actual, and logical doubt based upon reason and common sense. A reasonable doubt may arise either from a lack – either from the evidence or from a lack of evidence. Reasonable doubt exists you're not firmly convinced of the Defendant's guilt after you have weighed and considered all of the evidence. A defendant must not be convicted on suspicion or speculation. It is not enough for the State to show that the

Defendant is probably guilty. On the other hand, there are very few things in life – very few things in this world that we know what the absolute certainty. The State does not have to overcome every possible doubt. The State must prove each element of the crimes by evidence that firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance. If you find that there is reasonable doubt the Defendant is guilty of the crimes, you must give the Defendant the benefit of that doubt and find the Defendant not guilty of the crime under consideration. Does anybody have any questions about that?

A (No response or indication from any potential juror.)

Q It's a lot, but it's still kind of ambiguous maybe. So, Juror Number 50 – sorry, you keep getting picked on I feel like, and I'm sorry for that. I'm not trying to pick on you, but we have a job to do; right?

JUROR 50: Sure.

Q Thank you. Now you – earlier, you said you would want some evidence, I wrote that down, and that was before we started talking about reasonable doubt, but in – do you think if the prosecution gives you some evidence of Mr. Allen's guilt and, in your mind, you think, "Mmm, I think he's probably guilty," would you vote to convict him?

JUROR 50: Not if my thinking was "I think he's probably guilty."

Q Okay.

JUROR 50: No, I would not.

Q I think that would be really hard to do though; right? Like, we have children. This is a hard – this is gonna be a really hard case. I don't want you to think anything other than that, it's hard. You're gonna look at some hard

things here. And I think it would be really hard to put that aside and still vote not guilty. Do you think you could do that?

JUROR 50: Yes.

Q Okay. Anyone else? Does anyone else think that they would have a problem – if you listen to all of the evidence and you think that Mr. Allen is probably guilty, do you think that you could vote to find him not guilty?

A (No response or indication from any potential juror.)

Q It's hard. Juror 20?

JUROR 20: I would want to hear all of the evidence first.

Q Okay.

JUROR 20: I don't know what the answer would be.

Q I – do you mind if – you – I'm like – I'm not hearing very well, the voice goes up. Do you mind – am I getting in anyone's way if I stand this close? What'd you say?

JUROR 20: Oh, I would just want to hear all of the evidence first.

Q Okay. And that's one thing also I want to talk to you. You know, the State's gonna go first, they're gonna present all of the evidence that they have, and they're gonna give you everything they got; right? And so are you – do you think that you would be able to wait to form an opinion until they're done presenting their evidence and we're done presenting our evidence? Would anyone have a problem doing that?

JUROR 38: Well, I think it's gonna be hard. That's a long time.

Q Sure. Sir?

JUROR 18: Oh, I don't know. I think I've made up my mind.

Q Sitting here today, you've made up your mind?

JUROR 18: Yeah, I've made up my mind today, yeah. Yeah, I have.
Q Okay. And if the Judge instructs you that you have to listen to all of the evidence before you make a decision, are you able to put that preconceived notion aside?
JUROR 18: I don't know. I've been – like you guys did the opening statements, I ben thinking about what you guys would provide and what they would provide, and I think there's a way to manipulate it to that you guys might win; does that make sense?
Q I think I hear what you're saying, but my question is: Are you able to put your beliefs aside and follow the Judge's instructions?
JUROR 18: I don't think so.
Q You don't think so?
JUROR 18: Um-um. (Negative response)
Q Well, I appreciate your honesty. Number 44, I've got a couple questions for you.
JUROR 44: Sure.
Q I just can't hear very well –
JUROR 44: Yeah.
Q -- all the way over there, so I apologize, I'm gonna go over probably some things you've already said. But when Mr. McLeland was talking to you about beyond a reasonable doubt, do you believe that the State would have to show it beyond any doubt?
JUROR 40: No.
Q Okay. And Mr. McLeland had an analogy earlier about, you know, who thinks I'm a lawyer?

A (No response or indication from any potential juror.)
Q No one thinks I'm a lawyer? Anybody? Any takers? All right. So, you know, I'm here, I'm standing here before you, I'm arguing, I'm dressed in a suit and heels, 'cause I'm a woman, and so you probably all think I'm a lawyer; right? Yeah. And that's an easy assumption to come to; right? Judge Gull wouldn't let me argue in front of you or talk to you if I weren't licensed as an attorney in the state of Indiana, but there was a – well, there was an individual in the county that Mr. Baldwin and I practice in and he was arguing cases to courts and he had – he was hired by a very well-respected law firm as an attorney and he was signing pleadings and he had a bar number. The problem was, it turned out, the bar number was a made-up number and he had never actually graduated from law school, and it was, as you can imagine, quite a scandal, because these were – the attorneys who hired him were very well-regarded attorneys and really not supposed to do that; right? And so sometimes we have to look a little deeper than what we think we know. Is that a concept that anyone has a problem with?
A (No response or indication from any potential juror.)
Q No? Okay. Now, one of the things you're going to hear about is that Mr. Allen has made some incriminating statements during the course of these proceedings. Can anyone come up with a reason why someone may say they're guilty when they're not? None?
JUROR 9: It's kind of been said before.
Q Pardon?
JUROR 9: The element of the room, everything, the pressure that's been placed on him, that's kind of been discussed.
Q Sure.

JUROR 9: That's a lot of it, so –

Q Yeah.

JUROR 9: Yeah, that stuff happens.

Q All right.

JUROR 9: Kind of breaking their spirits – isn't it? – to get people to bend, that happens –

Q Sure.

JUROR 9: -- in these situations.

Q Okay. Other than the pressure of the moment and the circumstances, any other reasons?

JUROR 17: Lying to protect somebody.

Q Okay. Anything else?

JUROR 38: I'm a psychiatric nurse, so a lot of the times, we see people who have mental illnesses making statements that don't make sense or that aren't true.

Q Okay. Now, I saw that you said you were a nurse in IS.

JUROR 38: I work in administration now, information systems, yes.

Q Infor – okay. I didn't know what IS was, information systems.

JUROR 38: My background is psychiatric nursing though.

Q Oh, boy. Okay. All right. Any other reasons?

A (No response or indication from any potential juror.)

Q Okay. If some – has anyone here ever been accused of something they didn't do? Yeah? Juror Number 4?

JUROR 4: I can't think of off the top of my head, but –

Q Okay.

JUROR 4: -- there's been a lot of times –

Q I mean, I have three siblings; right? That happens, unfortunately.

JUROR 4: Oh, yeah. Stealing money from my dad, but it was my brothers.

Q Okay. Did you speak up for yourself?

JUROR 4: Yeah.

Q All right. Anyone else?

JUROR 44: I mean, same, I can't think of like a specific, but I remember feeling very alone for that, 'cause you're like, "I didn't do it."

Q Right.

JUROR 44: Yeah.

Q Yeah. Sir?

JUROR 22: I'm a teacher, I've been accused of a lot of things.

Q Now, can you think of a circumstance, if you've been accused of something that you didn't do, where – and it results in a criminal trial, where you might not want to tell the jury that you didn't do it? You're gonna have to get in that seat in what is, undoubtedly, the biggest moment of your life and try to convince 12 people that you didn't do what you're accused of doing. Would everyone here feel comfortable doing that?

JUROR 38: I'm not sure I'd feel comfortable, but I'd feel it was necessary to stand up for myself.

Q Okay.

JUROR 38: Whether I was comfortable with it or not, I would.

Q All right. Can you think of a circumstance where maybe you wouldn't?

JUROR 38: I understand it's my right, but I don't think that I would not do so. That's a double negative, but –

Q Sure. I can make – I'm following you.

JUROR 38: No, I don't think there is a reason why you would not.

Q All right. Anyone? Juror –

JUROR 50: I –

Q Go ahead.

JUROR 50: I was just gonna say I think it's a natural inclination to want to defend yourself if you're being unjustly accused of something, so the only reason I can think of, other than what's already been said, for someone not wanting to do that, take that opportunity, is if they were afraid of something coming out that would make them look guilty or make it look worse than the situation is, so that maybe by not going up there, that might be better for them in terms of a trial.

Q Okay. Have there – does anyone have a time when they were under so much psychiatric stress, they didn't feel that they could do the best job that they should do in a certain circumstance? Yeah?

UNIDENTIFIED JUROR: Yes.

Q You're so stressed out that, "Man, I just need to sit and be quiet"? Anyone ever had that experience?

A (No response or indication from any potential juror.)

Q Yeah? Would that might be a reason why someone might choose not to testify and proclaim their innocence? Juror Number 4?

JUROR 4: Can you repeat that? Sorry.

Q Sure. If you're so stressed out, you've got a lot going on, and you think

you can't perform your best at what may be the most important moment in your life, might that be a reason why someone might choose not to testify?

JUROR 4: Yes.

Q Okay. Maybe?

JUROR 4: Yeah, maybe.

Q All right.

JUROR 4: I don't think I understood the question.

Q Well, there were a lot of "mights" in there. It wasn't a – for an attorney, that was really a terrible question. If you're under so much psychiatric stress and you feel that you can't do your best at the most important moment in your life, might that be a reason why you would not want to testify?

JUROR 4: Yeah.

Q Okay. Sir?

JUROR 6: What as the question again, now?

Q Yeah.

JUROR 6: It's – I think that the evidence, if it's so overwhelming, that it can take and change your thought patterns. I had it happen to me once, my house burned down.

Q Oh, sorry.

JUROR 6: I drove to the store, which was two miles away, to get a loaf of bread and some milk. Twenty minutes later, I was in the Irish Hills in Michigan, sitting there, side of the road, wondering how I got here, and it was just – the stress was so much, it took over my mind, and I drove fine, but I don't remember going down that much road.

Q Okay.

JUROR 6: So I don't know if that's answering your question or not.

Q No, it is. You've had that experience where stress has interfered with your ability to think the way you normally think. Would that be a way to say what you said?

JUROR 6: Yeah.

Q Okay. All right. Let me ask you this: This is going to be a long trial, it's going to be a difficult trial, and I want to talk to you for a little bit about – I mean, I can't imagine what it would be like to sit where Richard Allen is sitting for four or five weeks while 12 people decide my fate. And my concern is I say something Mr. Allen and he smiles at me and I – it's hard, and it's hard to be that emotionally weighed-down for four to five weeks. And so are you gonna hold it against us or Mr. Allen if I lean over and say something to him and we both kind of smile or maybe even chuckle, that you would think that we're not taking this with the solemnity it deserves?

JUROR 18: I would.

Q Pardon?

JUROR 18: Yeah, I would.

Q You would?

JUROR 18: Yeah.

Q Okay. That's fair. Thank you for that. Anyone else?

JUROR 38: I'm a psychiatric nurse, I understand gallows humor very well.

Q Oh, that was – yeah.

JUROR 38: Very necessary.

Q Yeah, it is. It's –

JUROR 38: You gotta laugh or you're gonna cry.

Q Exactly, right. And sitting sometimes with nothing to do, you know, that can be hard, so I just want to make sure no – is anyone going to judge Mr. Allen for facial expressions or if he's talking to us or things like that. It's gonna be hard. All right. You're gonna hear some different types of evidence during a trial, I would say not evidence – not all evidence is created equal. And can you talk to me a little bit, Number 44, about different types of evidence; if there is testimony about something or scientific evidence, is there – in your mind, is there evidence that might – you might weigh differently?

JUROR 44: I'm not super in to like crime shows or anything, so I don't know a ton about that, but I do know, like, if there's something physical I would probably be more likely to weigh that heavier, but I don't know, because you guys were talking about *CSI*, I was like, "I have no idea," so yeah.

Q Sure. What about – sir, different types of evidence?

JUROR 6: It can be confusing.

Q How so?

JUROR 6: Well, say there's a kid that's at a basketball game. Somebody's drinking beer and they hand him one. Puts it in his coat pocket, hangs the coat in a closet, and the police find that coat with beer in it. It's confusing because the kid actually had an allergy to beer. If he would drink it, one sip or even the smell of it, he would go to the hospital in the little white truck. So they – the police were thinking he was guilty by the evidence they had seen, but as they searched further, it turned out that he wasn't guilty, he was just trying not to be the, you know, oddball of the group that was out there. And I don't know if that answers your question –

Q Yeah.

JUROR 6: -- or not.

Q Sure, sure.

JUROR 6: Sometimes when you get older, you talk too much, but –

Q I talk too much, so I guess I'm probably older, too. All right. And, ma'am, what do you think about that, different types of evidence and how do you weigh that?

JUROR 9: I think the evidence is very important in situations as to why would it even happen.

Q Why what?

JUROR 9: Why would it even happen, why would we have to be examining evidence, what caused it.

Q Okay.

JUROR 9: You have to find, you know, why are you even here.

Q Sure.

JUROR 9: So you have to have a starting point to begin with. You can't just jump on somebody and say, "You're guilty." That's not how it should work, but it does. I mean, people do, that's just wrong. You just have to find out why, you know, what's going on, what was the reason behind it –

Q Right.

JUROR 9: -- and then go from there.

Q I appreciate that. What if you have expert – I think you were the one talking earlier about experts and their credibility, their background, training, experience; is that right?

JUROR 9: That's right.

Q Okay. And if an expert comes in here and tells you, you know, "Hey, I've evaluated this, I've looked at it under a microscope, I've done it very carefully, and this is grey," would you believe it?

JUROR 9: I would tell them to look at it, examine it.

Q Right. And they're gonna say they did.

JUROR 9: Let's examine it, let's look at all the colors to it, let's dig deeper.

Q Sure. Are you willing to use your eyes and look at this and say, "You know, I know that that person has a lot of training and experience and education, but that's white"? Would you be able to do that?

JUROR 9: I wouldn't want to tell them, "You might need to have your eyes examined", but –

Q Okay.

JUROR 9: -- probably that's what I'd be thinking.

Q All right. Let me ask you this, it's been a long day: Is there anything that anyone feels like they – that us, representing Richard Allen, or even the prosecution might want to know that you haven't had an opportunity to say? Anything we should know about you in determining whether you should serve on this jury?

A (No response or indication from any potential juror.)

Q No? Okay. Couple things real quick. Juror Number 1 – or you're in seat 1, you're Juror Number 4, if you were Richard Allen and you were accused of killing two young girls, would you want you sitting as a juror?

JUROR 4: No.

Q Why not?

JUROR 4: I guess –

Q Pardon?

JUROR 4: Can you re-say that again? Sorry, if I was Richard Allen –

Q If you were Richard Allen –

JUROR 4: -- would I want him to be my juror? Yes.

Q Would you want someone –

JUROR 4: If he's found –

Q -- with your background, your training, your life experiences, your beliefs, your biases, your prejudices?

JUROR 4: I guess I really couldn't say that unless he was found guilty that it's – if he was found guilty, then no, but –

Q Okay. I don't think I'm asking a very good question. Do you think that you can be a fair and impartial juror?

JUROR 4: Yes.

Q And if you were accused of murdering two children, would you want someone like yourself as a juror?

JUROR 4: Yes.

Q Sir, same question.

JUROR 6: Same answer.

Q Okay. Ma'am?

JUROR 50: Yes.

JUROR 38: No.

JUROR 44: Yes.

JUROR 9: Yes.

Q You know you're a no; right?

JUROR 178: Yes.

JUROR 13: Yes.

JUROR 22: Yes.

JUROR 33: Yes.

Q You, as well?

JUROR 20: (Inaudible).

MS. AUGER: Okay. Thank you.

THE COURT: Are you done?

MS. AUGER: Yes. I'm sorry.

THE COURT: All right. Counsel may approach when you're ready.

(Sidebar conference conducted.)

THE COURT: Okay You agree on 4 and 11 for cause, 4 with her knowledge of the case and his family been (inaudible).

MS. AUGER: May I borrow your red pen?

THE COURT: Sure. The State is asking also for cause on 1. What is the cause on her?

MR. MCLELAND: Judge, I don't think she can find a caretaker for her kids, so it's a family hardship.

MS. AUGER: That's fair.

THE COURT: State's asking for cause on seat 3.

MR. MCLELAND: Yeah.

THE COURT: She has the husband with MS.

MR. MCLELAND: Caregiver for MS and so –

THE COURT: Do you have any objection to cause on those?

MS. AUGER: No.

MR. MCLELAND: Wish I could take her.

THE COURT: And we talked about 6, oh, Lord.

MS. AUGER: Yeah.

THE COURT: I don't know how you didn't get that one.

MS. AUGER: I know.

THE COURT: 7 cause? What is the cause on 7?

MR. MCLELAND: This one was hard to hear, but I thought she had said she had a daughter that she couldn't leave at home, so maybe I misheard her, but –

THE COURT: You misheard her.

MR. MCLELAND: -- that's what I had written down.

THE COURT: She said she had a high school daughter, but that she could make arrangements.

MR. MCLELAND: Okay. I'm sorry, Judge.

THE COURT: Do you want to –

MR. MCLELAND: -- that's what I have is "High school girl at home, can't be left alone," so –

THE COURT: Okay. And then, 11 we already talked about. And then, State's asking for cause on 12. What is 12?

MR. MCLELAND: 12 is the same thing, five children at home and she said – she told me it was a family hardship and everything and she was biased.

MS. AUGER: I don't have any – yeah, I'm just –

MR. MCLELAND: (Inaudible)

THE COURT: Okay. And then, State is striking seat 2, the State is taking 2, and you're out.

MR. MCLELAND: Yep.

THE COURT: The Defendant is taking none. You were gonna take 3, I mean, you were taking 3 –

MS. AUGER: Yeah.

THE COURT: -- but I took him for cause. So you don't have any perempts that you want to exercise?

MS. AUGER: Can I talk with co-counsel for a second?

THE COURT: Sure.

MS. AUGER: That was a lot of consensus building.

THE COURT: Okay. So no strikes?

MS. AUGER: Yes.

THE COURT: No strikes?

MS. AUGER: No, yes.

THE COURT: Oh, you're taking her, okay.

MS. AUGER: I don't want to steal your pen.

THE COURT: Thank you. This is your – seat 7's your – seat 7 is your alternate juror. Okay. Just give me your strike sheet. You already gave me your strike sheet. Okay.

(Sidebar conference concluded.)

THE COURT: All right. Juror 4 – well, let me back up here. One of you has been selected, and I will go through and advise each of you which individual that is. Actually, I'm just gonna do it right now. Juror 9 in seat 7, you have been selected to serve. The balance of you have been excused. Juror

9, I'll ask you to accompany the – Corporal Tinkel into the jury room. He'll give you some information and collect some information from you. Please don't speak to family and friends about what it is that you've been doing down here. You are free to tell them that you've been selected to serve as a juror in a criminal matter and that's the extent of what it is that you may share with them. Please avoid all media coverage about this case and, please, don't conduct any research on your own about this case. Please don't post any remarks about this case on any social media platform, and avoid reading anybody else's social media platform. When we reconvene later in the week, I will swear you in as a member of the jury and we will begin our travel to Delphi for the trial to begin on October 18th. The rest of you have been excused and I appreciate your time and your indulgence. And you'll all be going into the jury room with Corporal Tinkel. All right. Those of you remaining out in the gallery that have been called for jury – could you, please – we are still working, sir. Have a seat. Not you, people behind you. Those of you remaining out in the gallery, we have the numbers of folks now that we need for jury duty. If you need anything or work or for school, if you would see Tamecca or Dan downstairs in the jury assembly area, they will get you a excuse, and we will get an officer to get you out of that little cordoned-off area in the back there. Okay. And would counsel approach.

(Sidebar conference conducted.)

THE COURT: Okay. I wasn't hollering at you guys. These people in that side of the courtroom have been horrible, horrible.

MS. AUGER: I'm sorry.

THE COURT: Not your fault. But, I mean, I didn't – I wasn't yelling at you –

MR. MCLELAND: I was standing up for the jury.

MR. ROZZI: I'd prefer you not yell at me, but that's all right.

THE COURT: No, I was not yelling at you.

MR. ROZZI: I know you weren't.

THE COURT: They just don't respect the process, they don't respect the decorum. As soon as they think they can just pop up and fly on out of here, they do. And I'm concerned that that's gonna be their conduct –

MR. ROZZI: Yeah.

THE COURT: -- down in Carroll County, as well, so I thought I need to be barking at people, which I've been doing today. Not at you, gentlemen and ladies.

MR. ROZZI: Okay. Thank you. Well, when the jurors got up, I mean, out of respect I kind of stood up, too, 'cause we're just used to standing up.

THE COURT: No, no, no, and that's fine. But then he is standing and they're all getting ready to pack up their things and go run out –

MR. ROZZI: Yeah, I wasn't paying any attention to what's going on out –

THE COURT: -- and do their stand-up. No, because you've got your back – and you're working and facing this way. I'm seeing all this ridiculous behavior. Okay. I'm tired. What about you guys?

MS. AUGER: Yeah.

THE COURT: Do we want to call it a day and just do tomorrow for all of the motions and all of the – everything that we've got for tomorrow?

MR. MCLELAND: We could do Thursday. Does that –

MR. ROZZI: We're gonna to Thursday anyway, we're gonna –

MS. DIENER: We're gonna do Thursday for the ones that we have the witnesses for. Do you guys want to all of them on Thursday?

MR. ROZZI: I'll probably withdraw a couple of them, honestly. I mean, there's – some of them are just administrative things; right? You had some questions about a transport –

THE COURT: Yeah, 'cause you've got weird – they're – I can't – I have to tell somebody a date and a time.

MR. ROZZI: Yeah. And I was hoping that maybe you had some experience with that.

THE COURT: I do.

MR. ROZZI: That's why I was kind of leaving that –

THE COURT: I do.

MR. ROZZI: -- door open for you.

THE COURT: So what do we have –

MR. ROZZI: So my point is those are administrative.

THE COURT: Okay. So –

MR. ROZZI: Why don't we just tee them up on Thursday?

MR. BALDWIN: I don't think it'll take very long, in my opinion. We're gonna withdraw the motion for –

MS. AUGER: To view the scene.

MR. BALDWIN: -- to view the scene.

THE COURT: Okay. So what'll we have then to discuss? The motions in limine?

MS. DIENER: What's your motion in limine?

MR. MCLELAND: The correction officers is a motion in limine, there's a motion in limine for Tobin, motion in limine for *IPAS*, and the sketches –

THE COURT: Yeah.

MR. MCLELAND: -- so I think that's it.

THE COURT: Four. Is that it, then?

MR. MCLELAND: I think so.

MR. ROZZI: They've got witnesses for one. And we're not calling any witnesses.

MR. MCLELAND: Witnesses on the sketches, and then argument for the rest. The rest we don't have witnesses, just argument.

MR. ROZZI: Just do it on Thursday?

THE COURT: So just do it Thursday?

MS. AUGER: That'd be great.

MR. ROZZI: Gives us a little more time to prepare. It'll be cleaner.

THE COURT: Okay. All right.

MR. MCLELAND: Thank you, thank you, thank you.

THE COURT: All right.

MR. ROZZI: Okay.

MS. AUGER: Thank you, Judge.

MR. LUTTRULL: Thank you, Judge.

MR. ROZZI: So you're just gonna send them home tonight, basically, and – give them a little instruction, send them home and –

THE COURT: The jury? Oh, yeah.

MR. ROZZI: -- and just tell them how you –

THE COURT: And they will be called, yeah.

MR. ROZZI: Do you have a – forgive me, 'cause I'm trying – I'm learning. I've not had a sequestered jury like this.

THE COURT: Unfortunately, this is not my first rodeo.

MR. ROZZI: Right, that's why I'm asking. Is there a written statement that you're giving them in the back? Like is your bailiff reading them something?

THE COURT: They are getting a packet of information that tells them what to pack, what to bring, what not to bring. Their property will be searched when they come back to the building. They are giving us information about who they are and any – they're filling out a medical form and a health form and a contact form. They are also getting information from us about who their families can contact in an emergency and what they – what family members can do to support their loved one here.

MR. ROZZI: Okay.

THE COURT: They will get phone access in the evening, at the conclusion of the day. We've gotten – all of their phones will go in – their phone and the charger will be collected on Thursday and it'll go in a little Crown Royal bag, for lack of a better word. And anybody that brings a laptop for work, those will be turned in and those will be monitored by the bailiffs and by Leslie, so –

MR. ROZZI: With the admonishment tonight, what they're being told in the back, is that a written admonishment or is that something that your bailiff's just saying, "You can't go home and do any research"?

THE COURT: Basically, the admonishment that I have given them today is being reinforced in there.

MR. ROZZI: Okay.

THE COURT: But most of the – what they're getting mostly is just, "Here's what to pack."

MR. ROZZI: Okay.

THE COURT: You know, don't bring your contraband.

MR. ROZZI: Can we get a copy of the packet you're giving them, just a blank one?

THE COURT: I gave it to you.

MR. ROZZI: Oh, you did?

THE COURT: Yeah, I sent that to you guys.

MR. ROZZI: In an email?

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: Then, I don't need it; then I got it.

THE COURT: Okay.

MR. ROZZI: I got a few emails recently, so –

THE COURT: Well, and this was a while ago, when I sent you –

MS. DIENER: Before the first one.

THE COURT: Yeah – the seating chart, the –

MR. ROZZI: Oh, so like March/April?

MS. AUGER: Oh, gotcha.

THE COURT: Yeah, yeah, yeah.

MS. AUGER: Okay.

THE COURT: So that was a minute ago.

MR. ROZZI: I remember getting a seating chart and all that.

THE COURT: Yeah. It came – 'cause it had all of the hotel

information about –

MR. ROZZI: Okay.

THE COURT: -- what the jury is gonna do, and it's like a hotel guard duty and a notebook –

MR. ROZZI: Okay.

THE COURT: -- it was a whole pile of crap that I sent you guys.

MR. ROZZI: Okay. Well, I'll check out my pile of crap when I get back.

THE COURT: And if you can't find it, just let me know and I'll make another copy for you, 'cause I've got one in my office somewhere.

MR. ROZZI: All right.

MS. AUGER: Thank you.

MR. ROZZI: Very good. See you tomorrow.

MS. AUGER: No, Thursday.

MS. DIENER: Thursday. Tomorrow's Wednesday.

(Sidebar conference concluded)

THE COURT: All right. So we're gonna reconvene then on Thursday.

MR. ROZZI: Tomorrow's Wednesday.

MS. AUGER: Yes.

THE COURT: Tomorrow's Wednesday.

MS. AUGER: All day long.

THE COURT: All right. So is there anything else that we need to discuss on the record before we recess, Mr. McLeland?

MR. MCLELAND: No, Your Honor. Thank you.

THE COURT: Mr. Rozzi?

MR. ROZZI: No, ma'am.

THE COURT: Okay. All right. We are in recess. Jodie, you can go off the record and we are done for the day.

(Off record at 3:25 p.m.)

(On record at 4:05 p.m.)

THE COURT: Okay. And this is just gonna be I'm swearing in Leslie Ross as one of our bailiffs. Since she's not a sworn officer, I'm gonna go ahead and administer an abbreviated oath to – as bailiff, because she's a female and we have females on our jury, and I want to make sure that the females are cared for by another female. So, Leslie, if you would raise your right hand for me. Do you solemnly swear or affirm under the penalties for perjury that you will keep the jury in this case together in the jury room in the courthouse; to furnish them with food, as directed by the Court; to permit no person to speak or communicate with them; to speak or communicate with them yourself only by court order or to ask them whether they have agreed upon a verdict; and to return them into court when so ordered?

MS. LESLIE ROSS: I do.

THE COURT: Thank you. You are now sworn in as the female bailiff for *State of Indiana versus Richard Allen.*

(Off record at 4:06 p.m.)

(On record October 17, 2024, at 8:43 a.m.)

THE COURT: All right. Well, good morning, ladies and gentlemen. We are on the record in *State of Indiana versus Richard Allen*, 08C01-2210-MR-

1. I'll show that the Defendant is here in person with all his respective counsel. The State's here by their elect and the deputies. I've been in touch with the bailiffs, and the jurors are slowly assembling downstairs. When everybody gets assembled, they have indicated they'll notify me so that we can have them brought up and we can swear them in. I know that we have several matters that we need to attend to. I know the State's motion in limine regarding composite sketches was the only motion that required evidence; correct?

MS. DIENER: Yes.

THE COURT: Okay. So why don't we take that one up and get started, and then we can break as soon as I've been advised that all of the jurors are here. Is the State ready to proceed on its motion?

MS. DIENER: Yes.

THE COURT: Is the Defendant ready?

MS. AUGER: Yes, Your Honor.

THE COURT: Okay.

MS. DIENER: State would call Thomas Plantz.

(Witness sworn.)

DIRECT EXAMINATION OF THOMAS PLANTZ

QUESTIONS BY MS. DIENER.

Q Mr. Plantz, would you, please, state your full name and spell your first and last name.

A Thomas Plantz. First name is T-H-O-M-A-S, last name is spelled P-L-A-N-T-Z.

Q Thank you. Are you a law enforcement officer?

A I am a retired special agent and forensic artist with the Federal Bureau of

Investigation.

Q Could you, for the Court's benefit, go through briefly your education and professional history related to forensic art.

A Okay. I obtained a bachelors of fine art degree from Indiana State University. I worked in the commercial art and printing field for approximately five years. In 1995, I joined the Indiana State Police, where I held the positions of forensic artist, trooper, sergeant, investigator, SWAT team member, and field training officer. I was in the Indiana State Police for approximately nine years. In 2004, I joined the Federal Bureau of Investigation, where I was – took the position of special agent and forensic artist. I was assigned to the Knoxville Division for a number of years, the Detroit Division, the remaining 17 years of my career were spent there. My investigative duties included national security investigations, criminal investigations, bank robberies, violent crime, public corruption, just a litany of investigations I'd be responsible for. I also had side duties of responsibilities where I would – I was an instructor for the FBI, an adjunct faculty instructor from the Training Division, where I taught investigative interviewing, interrogation, forensic art, and law enforcement instructor programs. I was – let's see here, I also – during that time, I did temporary-duty assignments in Washington DC for a number of months in the Counterterrorism Division. I worked in a couple other special programs within the Counterterrorism Division throughout my career. And also, as an instructor, I was stationed at the FBI's Academy in Quantico, Virginia, where I helped with the instruction of new agent trainees and intelligence analysts. I – during the Indiana State Police, I received advanced training in interviewing, forensic art. Same thing in the FBI, I went to standardized forensic art trainings provided

either by the FBI or other agencies. I attended – over my whole career, I've attended numerous forensic art seminars or conferences as an attendee or also as an instructor. I retired in March of 2024, and currently am a consultant, where I provide consultation for government agencies for national security investigations and also forensic art.

Q So over the course of your law enforcement career, forensic art has been a responsibility or a specialization of yours, but always in conjunction with traditional law enforcement activity; is that correct?

A Exactly. I – my primary responsibilities were a normal field agent and doing – carrying on investigations. With regard to forensic art, a side note, I'm the first and only special agent in the history of the FBI that was qualified to actually perform forensic art for the FBI. We have a civilian staff in our laboratory in Quantico, Virginia, composed of forensic artists, but I was the only actually investigator, a special agent, to ever be qualified to do that because of my background and my education.

Q Okay. And so how many forensic art images have you created over the course of your career related to law enforcement investigation?

A It would be approximately 400 is what I think the number would be.

Q And is there a special technique that you use when working with a witness to create a composite sketch?

A Yes. It's an investigative technique called cognitive interviewing.

Q And in the area of forensic art, since you have been both an instructor and a student over the course of a long period of time, is a cognitive interview something that every sketch artist related to law enforcement uses?

A No. It's encouraged, but there is no regulatory means of every forensic

artist has to use a cognitive interview; so I know there are probably numerous forensic artists across the country or across the world that don't use a cognitive interview.

Q When you are instructing at a seminar for law enforcement, specifically in the area of forensic art, do you instruct people on how to use the technique and the importance of it?

A Yes. It is one of the primary components of my instruction and of the process that I use. It's also an accepted technique by a lot of national forensic artists. It's – the cognitive interview, in my opinion, is just as important – a complete and thorough cognitive interview is just as important, and the results from that interview, as is the actual composite drawing is, so they almost have, in my opinion, the same amount of weight.

Q So briefly describe for the Court what the cognitive interview process is.

A Okay. A cognitive interview is where you – the interviewer tries to elicit as much information from the witness by encouraging an open cognitive narrative or an open cognitive dialogue, where you educate the witness, give examples to the witness of what cognitive memory is, and explain the process, explain the expectations of what – the timeframe and what it takes, but ultimately is to take that witness back into the context of the moment of the incident or the event that they were involved with, quite literally trying to put them back in time to that moment. So it's important to start off with – and when I do an interview, I'll talk to someone probably for – it's been hours just getting to know them, finding out what their – what I call their operating system, how they process information, how they – how their memory seems to work with them, whether they're a visual or a literal person. Some people like to tell stories, some people draw maps, and

when you talk to them in that initial phase, you get a feel for how they present their material, and I try and then tailor the interview towards their strengths and away from their weaknesses; but ultimately, I want to take them back to that moment, actually even before that moment of the event, the hours and the time leading up to the event, through the event, and even after the event, explaining to them that they need to tell me their account of the event with as much detail as possible, that no information is insignificant. Sights, sounds, smells, feelings, emotions, the environment, everything that they experience in that event, I want them to tell it in the highest degree of detail possible, even if they feel that that – those details I might not want to know, I want to know anything that's in there. And by doing that, it takes them through that process, through time, and that content – reinstated – context reinstatement. So oftentimes, in police interviews, as investigators, we want to know certain facts like, "What did the person look like? What was – what car were they driving? What was the plate?" You know, all these things that we need for our investigation. And oftentimes, people jump right into that moment, which is almost like jumping in the middle of a story that you're telling without having the – I guess the environment and the layout of the whole story ahead of time. And what's important to realize, once you get to know the person and talk to them and build rapport with them, you understand how they process information. And maybe – for an example, maybe someone starts talking about the smell of the event, if there was gunpowder or blood or something else that triggered them, even though I think, in my mind, that's not important to me as an investigator, I want them to do that, because the most important – they're called memory codes that – when a witness or person experiences something, they form a number of memory codes. And the

memory code that I might want as an investigator might not be the primary memory code that that witness is going to feel is their priority, so the important part is to let them unpack their memory codes that are important to them; and when that happens, I describe them as dominoes, so once that initial domino, which is more important to the witness, once that falls, it starts to knock down other memory codes and, eventually, it'll get to the things that I want to know about. But during that cognitive interview, I'm not interrupting. It's not a standard police interview, I'm not asking questions, it's not a back and forth. We've set the scene, I had them lay out their whole cognitive narrative, I encourage them along the way, guided retrieval, but I don't interrupt. You can imagine when you've told a story to friends or family, and you're halfway through it and somebody stops you and asks a question and it messes up your cognitive recall, it messes up your flow, and you forget what you're talking about. So it's very similar to that. I let them say the whole open narrative, guide them through it, and then, when it's done, then I can circle back and maybe start whittling down into questions that I want to know about. So if you imagine a triangle, and at the top of the triangle is the open narrative, sight, sounds, smells, feelings, everything that that witness experienced and I'm just along for the ride listening. Then, when it's over with, then I can go back and I can take down – whittle down or funnel down specific points that I want to know about, maybe it's about a vehicle, maybe it's about a location. In composite drawing, it's about the individual, it's about not just the face, but everything I can derive from the individual from the witness – about the suspect from the witness, so it could be their demeanor, their mannerisms, their speech, if there was other people interacting with them. It goes beyond just the physical of what they were

wearing, it's what I call a human profile builder. We try and check as many of those boxes as possible when I whittle down; that way, the communication that's happening with me – between me and the witness is more clear in my mind, so the drawing – composite actually – composite drawing portion of it doesn't happen till much later in the interview after the cognitive interview.

Q So it sounds like that's very different from your traditional law enforcement interview for gathering data from a witness about a particular event.

A That's correct.

Q And so what factors impact a witness's observation that you are trying to arrive at for the purpose of your composite sketch?

A Well, I think the – one of the basic things to understand is that through memory, we do three things; when we encounter an event, the individual encodes it, they store it, and then they can retrieve it later. And I'll break that down. So encoding means an event happens, let's say that one of the lights in here fell from the ceiling and crashed to the ground. I see it, I encode the information, then I turn around and I store it. 'Cause if you think of this as file cabinets, so I'm seeing what's happening, I'm encoding it in memory codes, I'm storing it in a file cabinet, and then later, someone will ask me about it, maybe an investigator, and then I have to go back and I have to retrieve that file. So the considerations when dealing with any individual is we call encode, store, and retrieve in our own individual way, and when I say that, it's – my – a person's education, their background, their race, their gender, their age, all their experiences in their life with trauma, good things, bad things, that all makes up who you are as an individual. So for – back to the example, if that light fell, everyone in this courtroom would encode that based off of all their experiences in life. You would

also – where that – each individual person stores that information in that file cabinet, you do it from the same filter or lens of your life experiences. And then, when you're asked to retrieve that later by an interviewer or investigator, where you decide to put it in that storage area and how you decide to bring it back, that is also influenced by all those different factors and that filter or that lens. So memory is not an audio/video recording. So there could have been a camera up here that watched that light fall and crash, and it would have had the actual event, but everyone in this room would tell the story and encode that information differently based on their experience.

Q And so are there also things like the opportunity of a witness to observe just environmentally that would impact their sketch or whether you even do a sketch for the particular person?

A Sure. So would that witness have access to the actual information? Were they close enough to see an event? If that light fell here and somebody was out in the hallway and they heard it, did they actually see it? So would they be able to give an accurate description of what happened? So we look at lighting conditions, environmental conditions, even the physiological, psychological, and environmental factors that were going in. So if all of us in this room saw that same event with the light falling and you didn't – you slept maybe a half hour last night or you're really hungry or you're going through a divorce or there's other stressors or it – maybe the light fell right next to you and you were injured and caused trauma or brought back other memories, so we're all gonna – all those things are gonna affect it, how – again, how that was encoded, stored, and retrieved.

Q And what about the difference between interviewing and getting a sketch

from someone who is the victim of a violent crime versus someone who is a witness, not even realizing that, at the time, they're witnessing anything in particular? They see someone and, later, they're asked to recall that person because they're a person of interest, but yet, they saw no violent crime?

A Right. Now, again, that's another factor that can add in, because if you're violently assaulted, face to face with someone maybe five or ten minutes, you've got that fight or flight, that animalistic response to what's going in, so you're – the person that's going through the traumatic experience might have imprinted that memory and might have imprinted that information a little bit more because it was threatening, it was a very significant event, a life – and when you're viewing another person in a communication, whether it's a negative or positive communication, you're evaluating someone's facial features and their eyes, and you know, they say the eyes are the windows to your soul. You can tell when someone is angry with you or someone is pleasant with you, you can read that in their face, so that imprints a little bit more usually with someone that's involved in a violent crime. But if it's an incidental contact, if I'm just walking down the street – you know, this morning, I might have walked past three or four people, I might have noticed them and noticed a little, but I didn't spent a lot of time really imprinting that information because it really wasn't significant in my world at that time, so it can differ – again, that's the access of what did they see, what was the lighting, what was the circumstances, what was the distance, all these things.

Q And so as a forensic artist, if you're called upon to do a sketch with someone who would say to you, "I only saw the person for a few seconds, I didn't get to see their whole face," either part of it's covered or they're looking away or

they're looking down or there's some, you know, obstruction, here you are, an artist, being asked to draw a full frontal picture of a person; how do you address that as an artist?

A I think you have to do the cognitive interview. Normally, when the police or any investigators contact me, they'll give me a very brief description of what happens, and I don't want a lot of it, 'cause I don't want to put any undue bias in my head about what the actual circumstance is. But when I interview that person, do that cognitive interview, I'm evaluating, I'm asking questions to determine did they have a good view, did they see these things. And then, throughout that, I'm making an assessment of is this gonna be beneficial to do an actual composite drawing. Now, the benefit of the cognitive interview, you're still gonna get other information and you can make a determination at that point whether a drawing should be done or not done; and there have been occasions in my career where I've interviewed someone that I was told initially that they want to do a composite drawing, and then, after the interview, I realized, you know, this is – probably we're not gonna get much out of it and it might maybe cause more harm than good doing the interview, so you have to make that determination kind of on the fly.

Q Okay. And you talked about the fact that the person may not be able to give you enough information to do a sketch. What if the person is doing their best and they can't really pin down a particular feature? What do you do with that?

A Well, there's a couple things. Again, we can rely upon the cognitive interviewing process. Again, some people – a lot of people will tell me initially, "I don't know if I can do this," because they see it on TV and, if somebody asks me

to draw my brother right now, who I've known my whole life, my first instinct is like, "Oh, this is gonna be difficult," even though I know exactly who he is and I do it for a living. So when I start to talk to them, I start to evaluate do they have the information there period. Sometimes if they say they don't, we can work things through and, as I talked about the cognitive interview, you start off in the beginning and those dominoes start to fall, and sometimes details will come out later that you – that the witness didn't even realize they had stored, because they might have stored them haphazardly or very quickly under stress. But yeah, sometimes after that interview, it's – you just can't – there's not enough detail, they – it could go either way, it's just something you have to evaluate if –

Q Doesn't it – yeah. Doesn't it also impact say the use of that sketch then thereafter if the person was unsure about certain aspects, but even though you draw an entire face?

A Oh, absolutely.

Q Okay.

A You know, we could get to the point where we start doing a drawing and maybe we get 50 percent through the drawing and it just feels like we're not getting anywhere, and it doesn't – no matter how much, through the cognitive interview and drawing and making revisions, that we just don't seem to be getting a good-quality drawing, maybe we'll just stop or maybe we'll finish the drawing and we'll tell the in – I'll tell the investigators that I just don't feel like this was a productive, complete interview and maybe this composite drawing is not the way – what you should be using right now. I also will point out, now that I'm thinking of it, when I do a composite drawing it's not maybe like you see on TV where someone talks for five minutes, I sit there and draw, and then, tada, flip it

around; it doesn't work that way. It's – the person is sitting right next to me, there's – we've already talked for probably hours, and there's this open dialogue where we're going back and forth making revisions, so it is a – it's actually – I encourage it to be a team between the witness and I working on a common goal to get the best rendering of the person.

Q So does all of this effort you put into it, at the end, remove the subjective factors that you bring to the table or subjective factors that the witness brings to the table?

A No. No, those – all those subjective factors remain. And as you just mentioned, not only does the witness bring all those subjective things from their whole life experiences and how they process information and memory, but I bring that in, so all of my experiences and all my education and everything I've done in my life that makes me who I am, I'm listening to the account and making interpretation from their statement through my filter and through my lens, so you've basically doubled up on the subjectiveness. My ability to do an interview, good or bad, my ability to – actually my artistic ability on how well I can draw, how poor I can draw, that communication, so that's that subjective – so it's coming at it from two sides.

Q And that happens with any forensic artist; would you agree?

A Any forensic artist, absolutely. And, quite honestly, anyone – any investigator who conducts an interview is going through the same thing. In a sense, a composite drawing is like an illustration that accompanies an interview. Like a book has illustrations, a composite drawing is just a way of expanding a cognitive interview.

Q And so the communication is key to maybe sorting out some of those

subjective or personal biases a person brings to the conversation?

A Right.

Q Not intentionally, but just –

A Right.

Q -- life experience?

A It can be usually unintentional. And again, it's – we all have them. I say that when I teach my classes and when I approach the work that I do, you have to accept and acknowledge up front, and explain to the witness, that – about this subjective nature of it and that we have to work through those things as much as we can, but we can never completely negate that subjective nature.

Q And how do you deal with asking a witness to estimate the age of a particular subject and what's your experience with that?

A Well, again, we – when it comes down to where I'm actually asking fine questions later, clarifying questions after the cognitive, the most important thing to do is ask open-ended questions. Like, for example, a really bad question is to say, "Well, how old is that person?" By me saying that, I'm injecting my experience, I'm saying "old", into the conversation, so I could be biasing the actual results by saying "old". What I should say is, "Can you estimate the age of the person? Can you estimate the height?" Those type of things. Now, what I – when it comes to age, race, gender, there – through my experiences and through research that I've read, that when someone has to make an either identification or whether they have to do a composite drawing, which deals with recognition – not identification, it's recognition – that when people have to guess or try and estimate ages across their own demographic, it becomes more difficult. So I'll give you an example, if someone is a very young person and I'm

interviewing maybe a 15-year old and I'll ask them, "Can you estimate their age?" – I've had this actually happen – they said, "Oh, they were really old. They were old." And I go, "Okay. Can you give me a guess on age?" In my mind, I'm thinking – to me, old is 60, 70. When I asked them can they estimate the age, they said, "Oh, yeah, they were old. They were 30." I'm like okay, well –

Q There's a big difference between drawing a 30-year old and drawing a 60-year old?

A Exactly. Same thing if they're older trying to guess younger or across racial lines, genders. It doesn't see the – it doesn't mean they're completely inaccurate, it just seems like the more disparity in the demographic, it seems like there's a – harder for the witness to articulate accurately those types of things.

Q Okay.

A And there's other factors that can – you know, like the amount of time that they had with somebody, whether it was a brief thing, whether it was traumatic, which we've already talked about, so those all affect it.

Q And you've also talked about the skill of the artist, the skill of the interviewer, all of those are variables?

A I'm sorry, I couldn't hear that.

Q The skill of the artist and the skill of the interrogator, those are also all variables?

A Absolutely. I've – I will give an example, I know – I've known people that were some of the most amazing artists that I've ever known, really talented, artistic people, and they've entered into the forensic art world and they struggle, because they don't have the interviewing skills or the experience. I also know people that a really talented interviewers and investigators that have dabbled

into the forensic art world and they struggle because they don't have the artistic skills. So every artist, every basketball player, every football player, like we all have our different skill levels, so every forensic artist is not the same based on their skill level, artistic skill level, and their interviewing skills, just like anything.

Q Does having multiple sketches from multiple artists in a particular investigation raise concerns and could you share with us what those might be?

A Yes. Again, in my experience and research that I've read, that causes a problem because all those subjective things that I talked about earlier that make us all individual and how that – between the witness and all the things that the witness possesses and all the experience that the artist possesses, it would – pulls into that communication. Now you're multiplying that, because now you're entering maybe another witness and another artist, so you're adding all their life experiences and all those things that they do through encoding, storage, and memory, so you have extrapolated the subjective nature of it. So yes, it can become a problem.

Q And so how do you know when your composite is complete?

A It gets to the point where, during that – the final drawing phase and following up questions, I'll – there's a number of things. I'm watching the behavior. I've build a baseline of behavior of the witness early on through our initial rapport building part of the interview, through the cognitive interview, and then through the drawing aspect, I'm seeing how they react to it. I've had people physically that have been victims of violent crimes have physically gotten ill, have thrown up in interviews, have become irrational and scared, and that's a – sometimes that's a good indication something's going on there. So I'm watching their behavior and I'm asking them. I'm actually doing an evaluation system

based on – I use 1 through 10 and I'll ask the witness, at multiple phases during the interview, "Okay, on a scale of 1 to 10, with 1 meaning this drawing looks nothing like the person that I saw and 10 meaning it looks exactly like the person I drew, where are we?" So then I can start to gauge if we're making progress. Oftentimes, I have to tell them, because of my position and I'm an FBI agent and I'm a forensic artist, sometimes people can be – I don't know if the word is maybe wanting to please you or acquiesce to what you're doing, so I have to keep reminding them that, "You have to tell me the truth. You have to tell me whether this is good or bad or we're getting somewhere. You're not gonna hurt my feelings. This isn't about making a pretty picture. This isn't about me. This is about what you saw." And then – and keep reassuring them that it's – whatever the rating they feel they need to give, that's important, we have to be accurate. So yeah, probably three-quarters of the way through the drawing process, again, we're working together as a team, I'm gonna start asking that question of, "On a scale of 1 to 10, where are we?" If it's, you know, a 3, 4, 5, we need to keep working. If it's starting to go 4, 5, 6, we're getting somewhere. If it gets to the point where maybe we're not getting past that validation and we're not getting up to the 8, 9s, it – I start to think, "Okay. Well, maybe this isn't working. Maybe they didn't have access. Maybe they didn't have a good view. Maybe they just don't have it in their toolbox to get it any higher." So again, it's the limitations of what they experience and what they can communicate to me and what I can record. I will stay that if someone were to say – maybe ten minutes into a drawing, they said, "Oh, it's a 10," I'm gonna question that, because it's – I don't think I have ever had a 10 in my career and I don't think I've ever seen a 10. A 10, the way I define it is it looks exactly like the person. And because I can't

plug a cord into my head and plug a cord into the witness's head and download exactly what they saw and experienced, then the subjective nature of it would – it's difficult to get to a 10, so I usually question if it's a 10 and then we'll talk through it, and usually it probably goes back down a little bit, but – so yeah, that's how I evaluate whether it's complete. And when it's complete, there is – there's follow-up questions. Sometimes, after three or four hours that sometimes these can run, the witness can get fatigued, they can get tired, I get fatigued, I get tired, so sometimes, if there's a number of revisions they would like me to complete, I'll said, "Hey, let's end the interview, I'll go back, I'll make some of these revisions, and then I'll call you or I'll email you or I will make some communications of what I've done to the revisions on the images." It gives them a chance to rest. The interesting thing about cognitive memory is that once you get that cognitive flow going and people start remembering things, sometimes things can be omitted inadvertently, but they go home, they get rest, they get something to eat, and all of a sudden, they're like, "Oh", they smell something or they see something that cognitive – tricks a cognitive memory code to fire. They'll call me up, they'll go, "You know what, I just remember, you know, their ears looked like this" or "There was a tattoo here. I just – when I went to sleep last night, I just remembered it." So oftentimes, I'll continue the investigation and the drawing over a couple hours or days.

Q So how is a composite sketch then intended to be used?

A The composite sketch should be used as an investigative tool or what we like to call a lead generator. It is – it's not used for identification, it's used for recognition. So imagine if there's a suspect, just describe maybe an African-American male, approximately 30 years old, 6 foot. Well, you could go out in the

Fort Wayne area and, if you put your investigative feelers out, you might find hundreds, if not thousands, of people that fit that description. By doing a good cognitive interview and, potentially, a composite drawing, you can narrow that focus down to maybe ten people, maybe three people, depending on the – you know, the area and the population. So that helps law enforcement focus on a direction, focus on an investigative lead. It gives them a guess – again, a direction to follow, but it is not something that police – once I do a composite drawing, the police don't walk down the road in the city and hold it up to people and, when they find somebody that looks like it, they don't arrest them, grab them, put them in cuffs, and arrest them. It doesn't work that way and it wouldn't work that way. It's just to get them in the direction, then they can use their other investigative tools, whether it's forensic sciences or cell phone data or any – interviews, any number of investigative techniques that they can use then to focus on that particular suspect. So the composite drawing just gets them headed in that direction.

Q Okay. And so you're saying it's not for identification. Have you ever had a situation where your sketch was used for identification purposes of a suspect/defendant in a criminal case?

A No.

Q And would you advise against that?

A Yes.

Q And is there something that you do – well, let's talk about release to the public of a sketch. Are you a participant in the decision whether that gets released to the public?

A I don't make the decision. I'm often asked to give my input on how the

interview went. When I'm done with the interview, I write a report that summarizes my cognitive interview, because oftentimes there's a lot of things from a cognitive interview that come out that maybe haven't even been told to the police yet because that cognitive process hadn't happened, so I record it in an interview report, attach my notes, and obviously, the drawing, and I present it to the investigators. And they'll ask for my advice and I'll give them some, you know, "I believe the interview went well. I believe there's some validity to the – or confidence with the quality of the completed composite drawing." But I – it's not my decision whether it gets out to the media. I've had – made suggestions, "Don't put it in the media", because I didn't – I've had numerous cases where I felt like it was a – it's maybe a beneficial drawing in cognitive interview, but maybe the drawing is still a little too broad, and I've encouraged them, "Well, maybe you could circulate this through the law enforcement community, as opposed to putting it in the media." And it's worked numerous times in that environment, but ultimately, it's up to the law enforcement agency or the investigators. I do give them a written statement that I've formulated over my years and I always encourage them to, if it's gonna be released to the media or anyone, that this statement should be – should accompany it and should be placed in the press release or whatever.

Q Can you tell the Court what your disclaimer is.

A Would you mind if I read it?

Q That's fine.

A I want to make sure that I'm getting it correctly. The statement that I have them – that I provide for them is, "This composite drawing is an artist's rendering of an unknown suspect produced from a witness description. It should be viewed

as an approximation of a suspect's appearance, rather than an exact likeness." And even to dovetail on that, when I do a drawing, I intentionally – I can draw photorealistically, but I intentionally draw in a very sketchy type of technique so there is no ambiguity on whether that's a photograph or some type of enhanced image from modern techniques. I want whoever views this, whether it's the public or law enforcement, to see it and say, "Oh, yeah, this is a drawing. This is an approximation." So if somebody views it, they don't say, "Hey, that's – that doesn't look – or that looks like such and such." What I'd rather them do is look at it and say, "That could be such and such." So –

Q But you would tell us, then, that this is simply a tool for recognition of a potential suspect, but the investigation does not stop there?

A No.

Q And the picture that is drawn, the composite sketch, despite all of the effort that's put into it in order to elicit this memory from a person who sees someone of significance potentially, cannot stand alone?

A No. Again, it's an investigative tool that points somebody in a direction. And again, as an example, the hundreds of composite drawings that I've completed, I think I've only had to testify in court maybe three or four times and it was about what I'm doing now, the process, not an identification.

Q And wouldn't it be dangerous then to take a composite sketch and display it to the jury and say, "This is a composite sketch of our killer"? Wouldn't that create an imprint in their mind?

A It could.

Q And when you have multiple sketches by multiple witnesses, as we do in our case, doesn't that increase the danger when you have multiple sketches?

A Absolutely, because the subjective nature of the initial drawing itself and the first – and then you add another one, it's just multiplying that subjective nature, so it could be very confusing because it is my interpretation as an artist and an interviewer of a witness's statement, so it's not direct evidence.

Q And that would be true for any composite sketch by a forensic artist, because they're all coming from the same basic circumstances, subjective witness statement, subjective artist rendering, trying to put together something to help advance the investigation; correct?

A That's exactly it. Again, it's forensic artist, not forensic scientist.

MS. DIENER: Thank you.

THE COURT: Who's crossing from the Defense? Ms. Auger.

CROSS EXAMINATION OF THOMAS PLANTZ

QUESTIONS BY MS. AUGER.

Q Good morning, Mr. Plantz.

A Good morning.

Q Sir, would you agree with me that it's important to attain unbiased and uninfluenced sketches?

A Yes.

Q Okay. And you don't want to contaminate a sketch with outside influences?

A Yes.

Q Okay. Because sketches can and are routinely used, maybe not in your cases, but they're admitted in criminal cases all the time.

A I'm not familiar with they're actually admitted in court. I've always understood it to be hearsay.

Q Okay. But if sketches have been admitted in courts, you're not familiar with that?

A I'm sure they have been admitted in court before.

Q Okay.

A I just don't have specifics of it.

Q Okay. In fact, they've been admitted in states all over the country; are you aware of that?

A I'm not. I don't have anything to support that, but I wouldn't dispute that.

Q Okay. And it's important to have unbiased, uncontaminated sketches because they are not only used in court proceedings, but also to identify suspects.

A When you say "unbiased" – how are you phrasing it again?

Q Unbiased, uncontaminated sketches.

A Okay. It – I think my opinion would be it's important to do as much as you can to remove bias and contamination from it, but because of the subjective nature of humans and everything I've already explained, you can't remove all of it.

Q Right. And one way to introduce contamination into a drawing would be to show a photograph?

A Absolutely.

Q And another way to induce – I can't speak this morning, it's too early. Another way to introduce contamination into a sketch would be for you, as the artist, to look at a photograph of a potential suspect prior to the drawing.

A Oh, absolutely. If I – I've had times where people have asked me to do a composite drawing, investigators, after they have another – already have a

suspect and I refuse to do it. And if people show me a photo of a possible suspect, I won't do it, because you've just entered in the highest level of bias you could have. So yes, absolutely that's – that would be bad.

Q Okay. And you're the same Thomas Plantz that did an interview with Sarah Carbaugh and provided a sketch, a composite sketch?

A That's correct.

Q Okay. All right. Well, let's get back – you – your goal is to compose a sketch that accurately reflects the individual the witness saw as best you can?

A That's correct.

Q Okay. And you wouldn't want to compose a sketch that did not truly represent an individual identified by a witness?

A Absolutely.

Q That would be harmful?

A Oh, yes.

Q Innocent people could be suspects in a crime they didn't commit?

A Absolutely.

Q And innocent people could be convicted of crimes they didn't commit if that sketch were used in court?

A Potentially.

Q Okay. Now, you said you want to – I was writing as fast as I could –

A Okay.

Q -- so bear with me for a moment here – let the witness say their whole wide-open narrative before you ask questions?

A That's correct.

Q And that can take hours?

A It can, yes.

Q And part of that initial hour-long – hours interview is building rapport with someone?

A Yes.

Q And finding out how individuals encode, store, and retrieve information in their own individual way?

A Yeah, to the best of my ability.

Q Sure. So that you can elicit that and compose a sketch that accurately captures their memory of a suspect or a vehicle or whatever?

A Exactly.

Q Okay. And you can also choose not to create a sketch?

A Yes.

Q Okay, . Now, you spoke with Sarah Carbaugh on June 19th, 2017, at the Carroll County Sheriff's Office?

A Yes.

Q Okay. And the purpose of that was to produce a sketch or perhaps see if you could produce a sketch?

A That's correct.

Q And that was four months and six days after the girls disappeared on February 13th, 2017?

A Yes.

Q Okay. And, sir, within four minutes of starting your recorded interview with Sarah Carbaugh – had you spoken to her prior to that?

MS. DIENER: Judge, may I object? I didn't think the scope of this particular hearing is about his sketch in conjunction with Sarah Carbaugh, but

about sketch art in general and whether it would be relevant or excluded for relevance or hearsay or another rule of evidence, not to discuss necessarily a particular sketch related to this case with this particular witness, since we have a multitude of sketches.

MS. AUGER: Well, Your Honor, I think they're asking to exclude the sketch that he composed based on an interview with Sarah Carbaugh, so I –

MS. DIENER: We're asking – oh, I'm sorry. Go ahead, Jennifer. I'm sorry.

MS. AUGER: I believe that the specifics of how that sketch was rendered would certainly be important to the Court's analysis.

MS. DIENER: This motion is about any and all sketches related to this investigation and how they might be used or not used in this case, not a specific sketch.

THE COURT: Well, all right. Sustained.

MS. AUGER: Pardon?

THE COURT: Sustained.

Q Sir, are you familiar with the International Association for Identification?

A Yes.

Q Okay. And it is the oldest and largest forensic association in the world.

A Yes.

Q And you – in fact, you spoke at their August, 2019, conference at the Peppermill Resort.

A Yes, I did.

Q Okay. And you spoke on composite drawing interviewing essentials.

A That's correct.

Q Okay. And you familiar with the Standards and Guidelines for Forensic Art and Facial Identification?

A I have read them, yes.

Q Okay. And are those standards that are applicable to forensic artists?

A They are best practices, but it is not a governing regulatory – there – a certification.

Q But they're best practices?

A They are best practices.

Q Okay. And these guidelines tell you that a witness may be instructed that her signature will be the feature that allows her to identify the image in court, if necessary.

A I've seen that policy, yes.

Q Okay. And that's a best practice –

A Best practice.

Q -- for introducing those sketches in court; is that correct?

A That's correct.

Q Okay. And, in fact, those standards also say that once the image has been developed with the assistance of the witness and has been properly documented, it is to be perceived as a piece of evidence.

A I remember reading that, yes –

Q Okay.

A -- as a best practice, and I will add to that that –

Q That's all right. Thank you.

A Okay. All right.

Q Sir, you said it's also common to use a scale at the end or towards the end

of a cognitive interview to determine how closely that sketch resembles the person identified by the witness.

A Right, maybe a validation system, yes.

Q Okay. That was kind of a clunky question, but I think we're there.

A I gotcha.

Q All right. And the – a 10 is – would be an exact replica of the individual the witness is trying to describe?

A Yes, that's the way I utilize it.

Q Okay. And so would you agree with me that that would be a very good rendering or a description of a potential suspect?

A A 10?

Q Yes.

A Yeah. As I stated before, I don't believe that's attainable, that's my perspective of it. You can't – a 10 is an actual 100 percent recreation of that person and I've just never seen that done.

Q You haven't seen it; but it doesn't mean it hasn't happened?

A I've been in this business for a while and I – again, I go to these conferences, I keep up, and I don't think I've ever seen a composite drawing that looks exactly 100 percent like an individual person.

Q Okay. Again, you just haven't seen it?

A No, I have not.

Q Doesn't mean it hasn't happened; right?

A I guess.

Q Okay. I'm not done.

A Okay.

Q Sir, is it important to you personally that you always follow your own best practices?

A I say they're best practices, yes; but again, sometimes you have to adapt to the human. Again, as I stated, we're all individuals, we're all different, so they are a guideline, yes, to follow.

Q Okay. But it would take a long time of interviewing a witness before you were able to determine whether you had to maybe modify some of those best practices, I would think, take you a minute to figure that out.

A Can you say it again, I want to make sure I answer this correctly.

Q Sure. I presume it would take you a while to figure out whether you need to modify those best practices, it would take you a while into your interview of a witness, 'cause you would want to follow those if you could.

A Yes, absolutely, I think that's accurate.

Q Okay. But you yourself don't always follow those best practices, and you didn't in this case; right?

A No, I did follow this in this case.

Q Okay. Well, do you recall – and you would never tell a witness it was okay to cheat.

A No.

Q You wouldn't?

A Well, sometimes I use a word probably to relate it to videogames when I'm talking to younger people, like I use the phrase "cheat code", so you can bypass some things or you can do things to elicit more information by doing certain things. Let me articulate, so, for example – well, I can't talk about the individual case, but yeah, I would never tell someone to cheat, but I have used the word

"cheat code" before.

Q Well, in fact, you have told people, adults, it's okay to cheat; right?

A Not that I'm aware of. I don't know what you're talking about.

Q You told Sarah Carbaugh it was okay to cheat.

A I –

Q Do you recall that?

A No, I don't remember that.

MS. AUGER: May I approach, Your Honor?

THE COURT: Do you have an exhibit?

MS. AUGER: I do. I marked it as Defendant's Exhibit A.

THE COURT: Have you given it to Jodie?

MS. AUGER: Pardon?

THE COURT: Have you given it to the reporter to mark?

MS. AUGER: I can.

Q Sir, I'm showing you what I've marked as Defendant's Exhibit A; is that you?

A Yes.

Q Okay. Is that you interviewing Sarah Carbaugh in this case?

A Yes.

MS. AUGER: Okay. And I would play this – move to admit Exhibit A, Your Honor.

DEFENDANT'S EXHIBIT A OFFERED

MS. DIENER: I have no objection.

THE COURT: I'll show A is admitted without objection.

DEFENDANT'S EXHIBIT A ADMITTED

MS. AUGER: Your Honor, could I have a moment? This is not my computer and I can't get the audio up.

MR. ROZZI: There's a – the button's on the top left on like number 2 or 3 there.

MS. AUGER: Pardon?

MR. ROZZI: It's – the volume is on the top left button there. It's up there. See the volume up.

DEFENDANT'S EXHIBIT A PUBLISHED BY PLAYING

Q And, Mr. Plantz, you were cheating by showing Ms. Carbaugh the photograph of the suspect from the video from L.G.'s phone; right?

A No. To put it in context, what I'm saying is I asked her early in the investigation if she had seen the image from – the grainy image where you can't see the person's face, "Have you watched the media? Have you seen the news?" She said she had seen it numerous times. And I – for clarification, I said, "Is that the person that you're describing? Is this the person, the clothes they're wearing? Is that the person we're talking about?" And she said yes. So, because you can't see the facial features of that person, but we're already talking about the same thing, I brought that image in as a – to trigger memory codes, not of the person's face, because you can't see it, but it puts the context of the clothing and the way he walked, because she viewed these things. So I use that, and I'm using that term as I do with young people in like cheat codes on a videogame. It allows you to – the cognitive memory to trigger what was happening when she saw what she saw in that moment. So not – you can't see the face, so it is – it wouldn't damage what we were talking about, it wouldn't damage my objective of drawing the face.

Q And even though the standards say you shouldn't use photographs, both you used a photograph and Sarah Carbaugh used a photograph; correct?

A Whose standard?

Q Well, the International Association for Identification, those standards that we just talked about.

A Yes. And I also –

Q Okay. Thank you.

A -- being involved with that, they also – if there is surveillance video where enhancements are done or where the face is not visible, there have been many cases where they've used that for the same reason, to trigger memory codes to assist with recognition – with cognitive recognition when the face is not there.

Q There is a partial face that you can see in that photo you showed her; right?

A All I could see on that photo was graininess, just that it was –

Q That's all you can see.

MS. AUGER: No further questions.

THE COURT: Ms. Diener.

RE-DIRECT EXAMINATION OF THOMAS PLANTZ

QUESTIONS BY MS. DIENER.

Q To that end, Mr. Plantz, that goes to exactly what we're talking about, the subjective nature of a person's ability to recall an event and their ability to provide details for a sketch and an artist's ability to create a sketch from their own subjective basis –

A Right.

Q -- what they bring. Again, have you ever testified in a case to establish

your sketch as a piece of evidence for identification to be presented to a jury?

A No.

Q And you were asked about best practices and a reference to a sketch should be retained as evidence. In your experience as a law enforcement officer, just because something is called evidence, does that mean it's admissible?

A Not necessarily. And I follow – I have to follow the rules and regulations of the Federal Bureau of Investigation on how I collect, retain, and store that information, and I did that per our policy, not the IAI, but the FBI.

Q Okay. And does your retention of that sketch remove any of the subjective nature of it –

A No.

Q -- with regard to the subject matter we're here for today?

A No.

MS. DIENER: Thank you.

THE COURT: Ms. Auger.

MS. AUGER: Thank you.

THE COURT: And when we're done with this witness, the jury is in the jury room, so we can bring them in to be sworn before we start, 'cause we've got jurors.

RE-CROSS EXAMINATION OF THOMAS PLANTZ

QUESTIONS BY MS. AUGER.

Q The best practices adopted by the International Association for Identification state, "The witness may be instructed that his signature will be the feature that allows him to identify the image in court"; correct?

A I don't have it memorized. If you want to show me that, I will –

Q Sure.
A Again, I follow the policies of the FBI, not the IAI.
Q For identification, sir, I've marked this as Defendant's Exhibit B, Standards and Guidelines for Forensic Art and Facial Identification.
A Um-hmm, yes.
Q And to speed this up for you –
A Okay.
Q -- right there.
A Yes, I've read that before, I'm familiar with it.
Q And that's the best practice?
A Of the IAI, yes.
Q Okay. And, "We can cheat," that's what you told Sarah Carbaugh; right?
A Those are the words that I used.

MS. AUGER: Nothing further.

THE COURT: All right. Thank you, sir. You may step down.

THE WITNESS: Thank you.

THE COURT: We're gonna swear the jury in.

MS. DIENER: No other witnesses, Judge.

THE COURT: Oh, we're done with witnesses?

MS. DIENER: Yes.

THE COURT: Okay. Even better. Thank you.

MS. AUGER: Your Honor, we have more, when we're done with the jury, on this issue.

THE COURT: Do you have evidence?

MS. AUGER: I would like to tender the deposition of Betsy Blair.

MS. DIENER: The State would object.

MS. AUGER: We would like to introduce the deposition of Betsy Blair. Special Agent Plantz testified that he had never seen a 10, a 10 being an exact replication, and what Ms. Blair says is that this was the man she saw on the bridge, that that's what her sketch was, that it was the man on the bridge, and that it was a 10 out of 10, so we think that that's relevant for the sketch of Betsy Blair.

DEFENDANT'S EXHIBIT C OFFERED

THE COURT: And you are objecting?

MS. DIENER: Yes.

THE COURT: Okay. And how does that go to the motion in limine?

MS. AUGER: Well, Your Honor, what he said is that it can be subjective, but that a 10 out of 10 – this is their witness – would be an exact replication of an individual, and that is what Ms. Blair saw. And so I think that the subjective nature – Your Honor, this is also just a provisional ruling. Ms. Blair can certainly adopt that drawing in court, which is routinely done in Indiana, over hearsay objections –

THE COURT: Do you have case law?

MS. AUGER: -- going back to 1974.

THE COURT: And you have case law that supports that?

MS. AUGER: Yes, I do. Yes.

THE COURT: Did you not supply me with any of that information in response to the State's motion?

MS. AUGER: I have it here, Your Honor, but I didn't put it in writing

because I thought that was what we were doing here, but I – yeah, we got the motion early Tues – Monday –

MS. DIENER: Oh, Tuesday, yes.

MS. AUGER: Yeah, early Tuesday morning, and we had a day of court, so no, I did not have the opportunity to provide a memorandum of law. But, Your Honor, going back to *Rowe versus State* at 2 –

THE COURT: Stop, stop, stop. I'm sorry, we've got the – I need to swear them in now.

MS. AUGER: Okay.

THE COURT: Okay.

THE BAILIFF: All rise.

(Jury in at 9:50 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, Jason. Thank you, Jeremy. Well, good morning, ladies and gentlemen. It's nice to see you back here today. I hope that you had sufficient time to make all of your personal arrangements. I know that you've been ordered to report back downstairs this morning with all of your personal effects, and the bailiffs have been indicating that everybody is ready to go. So as I told you at some point in the last couple of days, I'm now required by state law to administer the oath to you to be the jury. The same rules apply as before to the oath; if you would respond either by stating "I do" or by stating "I so affirm." If all 16 of you would, please, raise your right hands for me. Do you and each of you solemnly swear or affirm under the penalties for perjury that you will well and truly try and determine this case at issue and now on trial and return a true verdict according to the law and the evidence as it is presented

to you during trial, so help you God?

(Jury sworn at 9:52 a.m.)

THE COURT: Thank you. All right. I will show that the jury has now been sworn in in the presence of the parties and the attorneys. You will now be transported down to your location, your hotel. You will be under the care of Jason and Jeremy, and Leslie will be joining you periodically, off and on. She's also doing other things, but she will also be with you, as well. Safe travels and it's very good to see you all and we'll see you in – we'll see you tomorrow morning at nine o'clock at the Carroll Circuit Court, where we will reconvene for opening statements, preliminary instructions, and then you will begin to hear the State's case in chief. And I'll just remind you that we will be working an abbreviated day on Saturday, we'll adjourn – we'll start at 9 and adjourn at noon, and then you will have the opportunity to make phone calls and perhaps visit with families on Sunday. You may take the jury, gentlemen.

THE BAILIFF: All rise.

(Jury out at 9:53 a.m.)

THE COURT: You may be seated. You may proceed Ms. Auger.

MS. AUGER: Thank you, Your Honor. Your Honor, *Rowe v. State* is an Indiana Supreme Court case from 1974, in which the Court overruled the defendant's hearsay objection to the admissibility of a composite sketch. Your Honor, there is also *Johnson versus State* –

THE COURT: Do you have citations?

MS. AUGER: Oh, I'm sorry, Your Honor, yes. 314 N.E.2d 745 at 749.

THE COURT: And the holding of that case was what?

MS. AUGER: Your Honor, in that case, the Supreme Court overruled the defendant's hearsay objection to the sketch, saying that the principle reasons for the exclusion of hearsay evidence are that the out-of-court declarant was not under oath, not subject to confrontation by the trier of fact, and most importantly, not subject to cross examination by the accused. But in that case, Your Honor, the witness who observed the individual testified, was subject to cross examination, and by adopting the sketch in court, that made the composite sketch non-hearsay in nature. Your Honor, there are also several cases, *Johnson versus State* at 472 N.E.2d 892, and I only brought *Johnson*, Your Honor, but there are several cases in the mid-80s when hypnosis was being used that did not allow composite sketches by witnesses under hypnosis, but the *Johnson* Court – which again is a Supreme Court case from 1985 – did allow the composite sketch because it was based on statements made when the witness was not under hypnosis. Your Honor, there are other cases from Indiana, there is a *Gregory-Bey versus Hanks*, 332 F.3d 1036, where they are discussing the admissibility of – and that is a U.S. – sorry, Seventh Circuit Court of Appeals from an Indiana case in which they discussed the admissibility of composite sketches and whether the identification procedures were unduly suggestive, but that does – I think, by that very analysis, we know that composite sketches are used and introduced and admitted when they're not unduly suggestive. As well, Your Honor, courts all over the country have admitted composite statements, including North Carolina, *State versus Patterson*, 420 S.E.2d 98; Illinois, *People v. Yates* at 456 N.E.2d 1369. And we believe that just because it can be subjective doesn't mean that these sketches actually are. Betsy Blair adopted her sketch as a 10 out of 10, and we would, however concede

that Sarah Carbaugh's sketch should be excluded, she did not adopt that to that level, and there were other issues, if the Court were to consider that, based on her specific interview and procedures that we believe would render it inadmissible. Thank you.

THE COURT: Ms. Diener.

MS. DIENER: Judge, the State feels that the motion correctly outlines the issues for the Court with regard to starting with a question of whether the sketches would be relevant in that the sketches, through testimony if necessary, at the time of each sketch, if the Court doesn't rule on this motion to exclude them, that none of the sketches were a tool to identify Mr. Allen, so we believe they are not relevant to the evidence against Mr. Allen. Number two, the persons who identified Bridge Guy are not being called as identification witnesses, such as Betsy Blair or Sarah Carbaugh. And for the Court's information, there are many sketches in the course of this investigation, and we're only referencing two of them today. So in anticipation of how they might be used by the Defense, this motion was filed in anticipation of that so as not to have sketches appearing in opening statements before there's rulings on particular witnesses or their evidence that might imprint the jury and create bias before we even get started by showing them sketches. So the specific concern was that sketches would be presented as demonstrative in opening statements before we have rulings on whether those are even relevant to this case. In addition, the State would ask that the Court rule that the sketches are hearsay and, in fact, even double hearsay by the suggestive nature of the very item itself and that the law enforcement purpose for using forensic sketches is an investigative tool, much like a PBT or – that's my best example, where you have

something that's helpful and it might be relevant, but yet it's not admissible due to the nature of the evidence and its unreliability. The case that Ms. Auger refers to in Indiana, *Rowe versus State*, is from 1974, it's before the codification of our Rules of Evidence, so case law was the guide at that time. In that particular case, although it does say that a sketch was admitted with the witness who helped prepare the sketch testifying, that question was only on the question of hearsay and in the context of some really different circumstances where the witness that helped prepared the sketch had the opportunity to observe the subject that they were describing for hours prior to the crime. It was a person in a bar and the victim was then later robbed by that patron, and so that particular witness had a lot of time to observe the subject and suspect, thereafter defendant, that they were making a sketch of. It's the State's position that the sketches would not fall into an exception to the hearsay rule under our current Rules of Evidence, and that the other Indiana case that was cited by the Defense is a case that is not on point and that being *Johnson.* In that particular case, in the summary of the case, to set up the circumstances, it talks about how the sheriff's office created a composite sketch from a victim who was receiving medical treatment and then the victim then unequivocally identified the person – her sketch didn't identify the person, she did, and the defendant was attacking facts that were supporting probable cause affidavits. So it was not used for identification in a criminal trial to determine the person's guilt or innocence. So again, very different from our situation. The other cases I could find in Indiana, it was either mentioned as evidence, but it was not the subject matter of the appeal, or it was a composite sketch that came from the result of hypnosis and it was ruled as inadmissible. It is the State's request that because the composite

sketches were not a – they were an investigative tool, they were not used to identify Mr. Allen, they were simply used in this investigation to generate leads, that either on a case-by-case basis or by granting this motion in limine, that the composite sketches should be ruled as irrelevant to Mr. Allen and, in conjunction, that they would be double hearsay, if not hearsay on a basic level, as to the subjective nature of how they are prepared, the subjectiveness that a person brings to them, and how that cannot be removed from the end result. There would be a difference of opinion, even with Ms. Blair, about what a 10 meant to her and that not all interviewers do things the same way, and there would be testimony as to what she believed she was validating by giving it a 10 at the time.

THE COURT: Okay.

MS. AUGER: May I briefly respond, Your Honor?

THE COURT: Sure.

MS. AUGER: Thank you. First of all, pursuant to Rule 801(d)(1)(c), a statement is not hearsay if it is an identification of a person shortly after perceiving the person. Ms. Blair's sketch was three days after she saw the individual on the bridge on February 13th. Sarah Carbaugh's sketch was four months and some days after that. In terms of relevance, Your Honor, the State says they've not used Betsy Blair's sketch to identify Mr. Allen. That's because it looks nothing like Mr. Allen. And he absolutely has a Fifth Amendment right to confront and cross examine witnesses against him as to identity, that is the Fourteenth Amendment due process right to a fair trial. And to the extent that Betsy Blair has identified an image that looks nothing like Mr. Allen, that is absolutely relevant; it goes to the very fundamental nature of a fair trial for him.

With regard to – further with regard to hearsay, Your Honor, where a witness is available – we have Ms. Blair under subpoena, where she is available and subject to cross examination – those are the concerns behind the hearsay rule, and those concerns did not change when it was codified. Thank you.

THE COURT: Anything else, Ms. Diener?

MS. DIENER: No.

THE COURT: Okay. Well, obviously, I haven't been provided with any of the case law, so I'll have to get the case law and review that case law. I mean, I guess, just so you kind of know where my head's at, I'm struggling with how the composite sketches, which, according to this witness, deal with recognition, not identification, I'm struggling with how that would then be relevant if it's an investigative tool that is not used to identify this particular defendant. So I'll have to look at the case law and I'll give you a ruling tomorrow morning before we get started with opening statements. We then have the balance – do you have any other evidence to present on any of the other motions?

MS. DIENER: No.

THE COURT: Okay. Does the Defendant have any other evidence to present on any of the other motions?

MS. AUGER: Your Honor, I do have Ms. Blair's deposition.

THE COURT: C was – it should be – she's moving it as C, yeah, 'cause B was never admitted.

MS. AUGER: Right.

THE COURT: B was just used to show the witness.

MS. AUGER: B were the standards.

THE COURT: B were the standards, yeah. A was that flash drive.

And just for purposes of trial – I know that you're objecting to the deposition coming in. I'll show it admitted over objection for purposes of the hearing.

DEFENDANT'S EXHIBIT C ADMITTED

MS. DIENER: Okay.

THE COURT: I would encourage counsel – I mean, whatever exhibits you have that you will be introducing during the trial, I can't give a flash drive to the jury. So if you have exhibits that you are going to be showing to the jury, they need to be able to be used by the jury during deliberations, and I can't give them a flash drive.

MR. ROZZI: Yeah.

THE COURT: Yes.

MR. ROZZI: What can you give them?

THE COURT: Photographs –

MR. ROZZI: How are we supposed to offer up a video to them, from a technical standpoint?

THE COURT: Well, if you have a video that you want to display to the jury and they want to see it during deliberations, you have to be able to give me a medium that I can have the bailiffs use to show to the bailiffs [sic], unless you all want to be here when the jury is reviewing digital evidence. If you want to be here, that's fine. That means you all have to be within five minutes of the courthouse while the jury is deliberating, that Mr. Allen is gonna have to be transported over, and if that's how you want me to handle it, I'm happy to do it that way. But displaying things to the jury on a little, tiny laptop is not gonna be sufficient.

MR. ROZZI: I understand. May I just – we're trying to problem

solve here, so that things are not so clunky. Having gone down to Carroll or over to Carroll and looked at some of the technological issues or challenges over there with the new equipment, my expectation is, is that we're gonna have a laptop on our desk and that that laptop's gonna have a thumb drive, and when we go to publish things to the jury during the course of the trial, we're gonna have an assistant who's helping us publish those things, whether it be video or photographs and things like that. One of the concerns I have is that, obviously, if those things are going to be admitted, i.e. a video or an audio statement, that we would offer those up to the Court in a thumb drive, knowing that – or some other, I guess, hard drive of some sense, knowing that one of your staff members would be able to plug that into the TV and show that to the jury later. One of my concerns is that I don't want to put – I'd like to not have to put each particular video on a separate medium, because we're gonna have multiple – you know, you're gonna have multiple thumb drives or whatever it is, and so I would appreciate the Court's guidance in maybe talking through that, even if we do it off the record, but those are some things that I'm concerned about just in terms of the volume of evidence and just having some kind of new technology down there and some, you know, circumstances that may be different than what you're dealing with in your own courtroom on a routine basis.

THE COURT: Okay. Did you want to say something, Ms. Diener?

MS. DIENER: I would expect that each exhibit, if it's a video, would have to be on a separate device, because if they ask to see a particular video and the Court says that that's appropriate, we don't want to send back a flash drive with ten videos; but it's just a thought.

THE COURT: Well, and I can't send a flash drive back to the jury

room.

MS. DIENER: Right.

THE COURT: They don't have anything in the jury room to review that on.

MS. DIENER: We'll have to come into open court.

THE COURT: So it would have to be – they would have to be brought back into court to use the court equipment in the Carroll Circuit Courtroom to do that. My practice here has been, for the last 20 years, that the attorneys waive their presence, the defendant waives his presence, the jury is brought back in, they're sat in the jury box. I come in and explain that the bailiff's gonna run the equipment, the bailiff has to stay in the courtroom, so they can't deliberate, you can play it through once, that's it, we don't go back and forth. That's consistent with case law that they're entitled to review the evidence. But I have that concern that if you're gonna put ten flash drives on – the bailiff may not know which specific one you have that you're gonna be wanting – and what if it's determined to be inadmissible? Then how do you eliminate that from that particular flash drive?

MR. ROZZI: Yeah. So I think what I'm hearing is the better we label those things on the drive, the more it's gonna be helpful to the –

THE COURT: Yeah.

MR. ROZZI: -- bailiff. Because really, the bailiff's gonna be in control of that thumb drive and be able to click on whatever file is the appropriate file, even if there's multiple files on one drive.

THE COURT: Yeah, but you're gonna have to mark them pretty clearly.

MR. ROZZI: Yeah, I agree with that.

THE COURT: Okay.

MR. ROZZI: That's what I'm asking. I appreciate that.

THE COURT: Okay.

MS. DIENER: And the State would waive being present if the Court needed to go through that process.

THE COURT: Okay.

MR. BALDWIN: We would, too.

THE COURT: You would, too?

MR. BALDWIN: Yeah.

THE COURT: Is that what you just said?

MR. BALDWIN: Yes.

THE COURT: Okay. All right. So I will take the motion in limine under advisement to look up the case law which, if you've got copies of that case law, that'd be helpful; otherwise, I'm gonna have to find that stuff, so I'll take that under advisement.

MS. AUGER: Your Honor.

THE COURT: The – yes?

MS. AUGER: I did not bring clean copies with me, but I can file them and email them to counsel and to you, if that'd be helpful.

THE COURT: You could email them. That would be helpful, yes.

MS. AUGER: Okay.

THE COURT: Just email me.

MS. AUGER: Thank you.

THE COURT: And you have my email address.

MS. AUGER: Yes.

THE COURT: Okay. Yesterday at the bench, the Defendant indicated that you were withdrawing the motion for the jury to view the scene.

MS. AUGER: Yes.

THE COURT: Is that accurate, that is being withdrawn?

MR. ROZZI: Yes, ma'am.

MR. MCLELAND: Judge, I'm sorry, could we release the witness for the first hearing?

THE COURT: Yes.

MR. MCLELAND: Okay.

THE COURT: I mean, we don't need the witnesses any longer?

MS. AUGER: No.

THE COURT: Okay. Yes.

MR. MCLELAND: Okay. Thank you, Judge.

THE COURT: Okay.

MR. MCLELAND: Sorry to interrupt, Judge. Thank you.

THE COURT: No, that's okay, that's fine. I know at the beginning of voir dire on Monday, the Defendant moved for a separation of witnesses, which I granted. You designated a witness, Max Baker to assist. I granted your motion and I forgot to sign the order, so –

MR. MCLELAND: Judge, could – can the State add to its argument about who they want in the court? I wasn't prepared when Mr. Rozzi brought that up during jury selection. I didn't know we were gonna address it then and I didn't have my notes. Can I, at least, add to my argument to allow two witnesses for the State to be present?

THE COURT: Yeah, go ahead, 'cause I didn't rule on that.

MR. MCLELAND: Correct, Judge.

THE COURT: Go ahead.

MR. MCLELAND: Thank you, Judge. I had an opportunity to review some of the stuff that Mr. Rozzi cited in court, and I think the rule that he cites, from what I can find, is actually gonna deal with common law. Now that we've adopted the Rule of Evidence 615, under that rule, that are exceptions to the standard with only having one witness and the other people being excluded by the separation order, and one of those exceptions – there's actually three – the party is a natural person, an officer or employee of a party that is not a natural person designated as its representative, and then, in the third section, a person whose presence is shown by a party to be essential to the presentation of the party's case; and that's where the State lies, Judge, under section 3, that these people, the two people we've asked to be excluded, Jerry Holeman and Steve Mullin, are essential to the presentation of the party's case. And so what the rule says is it's possible to have more than one witness excluded from the rule or separation of witnesses if you have witnesses who fall within one of these three categories that I talked about. Our witnesses fall, again, under their – under section 3, where they're essential. For the State to be able to keep two of its officers or agents excluded from the separation order, both must be qualified as essential, and that's *Osborne versus State*, 754 N.E.2d, and that's a case from Indiana in 2001. To be essential, the witness has to have such specialized expertise or intimate knowledge of the facts of the case that a party's attorney would not effectively function without the presence or aid of the witness, and that is the case I'll be talking about mostly, that is *Long versus State*, 743 N.E.2d

256, again from 2001. And in *Long*, the State was allowed to keep two representatives, an ISP trooper and a representative from the FBI, both as essential witnesses because of the length and complexity of the case. The two people that were kept in, the ISP trooper and the FBI agent, were both heavily involved in the case, but involved in different roles, meaning they interviewed different people, they tracked different evidence. In that case, there were over 45 non-police witnesses, several search warrants, 66 exhibits, and all that was done in preparation for a seven-day trial that entailed a three and four – three to four-year investigation. Here, we are well over 66 exhibits. We're well over 45 witnesses. This is a lengthier investigation over a longer period of years. Our investigation surpasses the metrics and the complexity of the case in *Long* and our trial length is possibly three times longer, and so I can't – I don't see a case where it would be more essential than the case we have here today, Judge, where we'd need two witnesses or two representatives from the State. Their roles are different. Steve Mullin is my investigator in my office, he conducted several of the non-police invest – or interviews. He has been in charge from day 1 for us to track and keep track of all the exhibits, all the evidence, all the discovery in this case. He has an intimate knowledge of where those things are located within the discovery. As the Defense has complained about many times, there's 26 terabytes of information in this case over several hard drives, several videos. He is the person that can locate those things, if they're brought up in court, at the drop of a hat, Judge. He has an intimate knowledge of those things. He also participated again in several aspects of the investigation, interviewing witnesses, collecting evidence, those kind of things. ISP trooper Jerry Holeman, he's the lead investigator, and again, his role was interviewing different witnesses from

Mr. Mullin, interviewing the Defendant, collecting evidence from the Defendant, and all those things. So they had very different roles in the investigation and both of those are essential for the State to be able to present its case. And so that's the argument, Judge, for the State for those witnesses to be exempt from the separation of witnesses, and we'd ask the Court to consider that in making a ruling.

THE COURT: Okay. Anything additional, Mr. Rozzi?

MR. ROZZI: Judge, I would just note to the Court that Rule 615 is exactly what I referenced the other day, that is the rule regarding – that the separation rule of the Rules of Evidence. I would add that, again, the real issue here is the substance of what both Mr. Holeman and Mr. Mullin were involved in in this case. And it's easy to say that they were involved in different things. Naturally, in any case, two people are gonna do different things, but it's the similarities that are the problem here, and that is to say that both of them interviewed witnesses, frankly, in the recent past at the DOC that pertain to some of the essential issues in the case, i.e., the incriminating statements that are alleged to have been made by Mr. Allen; and the credibility of those particular witnesses have been called into question even in some of the pleadings today. And so that goes more to Mr. Allen's confrontation right, and that is that his confrontation right is a Constitutional right, which I believe takes precedence over 615, which is, you know, an evidentiary rule. So in terms of authority, I think there is more priority on the confrontation right, so I'd ask the Court to take that into consideration. And I do think that – you know, the underlying purpose behind the separation order is just to prohibit witnesses from being able to communicate with each other and to testify in a manner that would be –

otherwise be consistent with another wit – persons – with the other witness to the extent that it's helpful to the State in this case. And Investigator Mullin has been working for the Prosecutor's Office and dealing with all the discovery in this case, it seems like a natural transition for him to be identified as the State's representative, that seems normal and natural to me. But Trooper Holeman is an officer who has interviewed many witnesses, and many of those, their credibility will be called into question, so we would ask the Court to take that into consideration. And otherwise, you know, this is – I mean, I filed a motion asking for an exception to the rule, and the State doesn't object to my request. The State hasn't offered up any evidence, they're just sitting here arguing. And so, you know, this is a pre-trial hearing; I think, to the extent that they're asking you to rest on argument, I don't think that's appropriate either, so I'd ask the Court take that into consideration. Thank you.

THE COURT: Thank you.

MR. MCLELAND: Judge, might I respond briefly?

THE COURT: Sure.

MR. MCLELAND: In terms of credibility of witnesses from the DOC, I don't know how Investigator Mullin or Trooper Holeman would be able to testify on the credibility of a witness or vouch for a witness. The witnesses that the Defense are talking about from DOC, we plan to have a lot of witnesses here to testify, they're gonna be available for cross examination, they can call the witnesses for cross examination, so I don't think either one of those witnesses are gonna be testing about the cred – testifying about the credibility of a DOC witness. It seems that the Defense not only wants me to only have one representative, but now they want to choose the representative that I have on

top of that, Judge; and so I don't know how the Court's gonna rule on this, but I – if the Court denies our motion and only allows one person, we would ask that the lead investigator, Jerry Holeman, be allowed to stay in the courtroom. I just don't think the Defense's arguments are applicable in this case, given the, I guess, complexity of the case that we have, Judge.

THE COURT: Okay. Well, I did take your motion under advisement, Mr. McLeland, having previously granted the Defendant's on October 14th. The Defendant objected to you keeping two. Based on your argument today, I'd find that they are going to help you during the presentation of your case and, over the Defendant's objection, I'll give you the opportunity to have Mr. Mullins [sic] and Trooper Holeman to assist the presentation of your evidence. Are we ready now to then resolve the other three motions that we have? We've got – the State had two motions in limine, one regarding an IPAS settlement and one regarding a Defense witness, a William Tobin; and then, the Defendant had a motion in limine regarding testimony from various prison guards, inmates, law enforcement officers, and IDOC staff members. Why don't we take the Defendant's up, since there's just one. Who's gonna argue that one?

MR. ROZZI: Me, Your Honor. Thank you.

THE COURT: Okay. You may proceed.

MR. ROZZI: Just one second, please. I'm shifting gears here. Thank you, Judge. Just to make sure we're on the same page, we're talking about the motion in limine file-marked October 11th, 2024, regarding State's witnesses?

THE COURT: Yes.

MR. ROZZI: Thank you. All right, Judge, so to kind of set the stage

here, there are a number of witnesses – and I didn't – I mentioned in the motion, I didn't identify them specifically in the motion because there's so many. I can do that now or I can wait until we're done making the legal arguments and then identify them.

THE COURT: You can – that's fine, you can list them later, that's okay.

MR. ROZZI: I'm sorry?

THE COURT: You can list them later, that's okay.

MR. ROZZI: Okay. All right.

THE COURT: Just go ahead and make your argument.

MR. ROZZI: Thank you. And, you know, those witnesses would be, number 1, prison guards from Westville and Wabash Valley, possibly some jails, maybe the Cass County Jail, maybe White County Jail, and maybe the Carroll County Jail, where Mr. Allen was housed for periods of time during this case; number 2, inmates from Westville Correctional Facility; and then, number 3, police officers or law enforcement officers who would have gone to those facilities and interviewed inmates and guards as it relates to Mr. Allen's actions while housed at the DOC. The argument is or the concern is, is that during many of those witness interviews, what you've got is, is you've got an officer, Officer Mullin, Officer Holeman, Officer Davies I believe, Rich Davies was one of those, Officer Harshman, who testified at one of the pre-trial hearings in this case in July, those officers essentially went in and used what I would consider kind of a template for interviewing these guards and inmates. And that template was, basically, this: Who are you? What's your connection to Mr. Allen? How much time did you spend observing him? What did he say when you were observing

him? What did he do when you were observing him? And maybe, most importantly to this particular motion, how was he acting and what was your opinion about whether or not his actions were genuine? And in those interviews, as part of that template, the officers would almost always preface their questions about how genuine Mr. Allen was acting with, "Hey, I understand that you don't have any history or you don't have any education in psychiatry or psychology or you don't have a background in mental health, those kind of things, but would you just tell us what's your thought about whether or not he was faking this or not?" And so it goes to this kind of feigning behaviors that may or may not have been part of Mr. Allen's circumstances in his cell. And so one of the concerns that the Defense has is that, essentially, these witnesses will be marched in and asked the same types of questions that the law enforcement officers asked them in terms of, "Hey, you know, I understand you don't have any background in psychology, but would you just tell me, do you think he was honest or do you think he was telling the truth or do you think that he was acting genuinely when he did this or was he faking?" And I believe – the Defense believes that those types of questions and the attempt by the State to elicit testimony about these feigning or faking behaviors would violate Rule 701 and that is to say that those witnesses must have specific life experiences in order – or similar life experiences in order to be able to testify that Mr. Allen was acting with some sense of genuineness or not. And I think what you will hear, and maybe these are foundation things that would be addressed in court at the – during the trial, but I think what you're gonna hear is, is that none of these people had ever been incarcerated like Mr. Allen was to the extent that he was a pre-trial detainee and that these things were occurring while he was in solitary confinement for months

and months and months at a time without interruption. And so I don't think that there's a basis – it's kind of a first-hand – it's similar to having first-hand knowledge, it's a similar argument, but it's Rule 701. Rule 702 is, as you know, the rule that requires that, to the extent that you're gonna testify about someone's state of mental health, that there has to be some expertise established if somebody has a background, you know, if they're an expert, basically, or at least a skilled witness in that particular area. And in fact, in this case, most, if not all of these individuals, at least the guards and the inmates, have acknowledged to the officers, "Look, I don't have any background in mental illness or history of" – I'm sorry, "in psychology or mental health." There are a few – in full transparency, there are a couple of witnesses that did indicate that they had taken a capsule of training with the DOC and that there was a component of that capsule that had to do with dealing with people with mental health issues. The evidence would show, if we went through that, essentially, that these are those – this is the kind of training where, as a DOC officer, it's kind of like first responder training, like if you get to a – if you're involved in a situation where some schizophrenic – somebody who's got schizophrenia is acting this way, this is how you keep things – this is how you calm things down until we can get some professionals there. And so, in full transparency, there is a little bit of that sprinkled into the testimony, but I don't think anybody that you would hear would be able to establish that they're an expert or a skilled witness as it relates to the psychology or mental health or anything of that nature. And, in fact, again there's admissions by the law enforcement officers, as they're asking the questions, that they understand – they being the law enforcement officers – that that's the case. And then finally, 704, I believe that

rule applies in that, you know, essentially by eliciting testimony about whether or not an inmate or a guard believed that Mr. Allen's statements were genuine or that he was fake – or the alternative, that he was faking those things or feigning that behavior, it's a conclusion of law and – because it goes directly to his guilt or innocence, and so I think, based on 704, those types of arguments should be excluded. And then, finally, Rule 403 – maybe I said finally a minute ago, but Rule 403 also applies, and that – the idea that the Court would allow these things to happen, people without any type of real background or skill sets in mental health or psychology or anything of that nature would just be confusing to the jury, and so I think 403 applies, as well. Thank you.

THE COURT: And who is arguing for the State?

MR. MCLELAND: Judge, I am. Sorry.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, when I read the motion in limine, I kind of focused on the prison guards, law enforcement officers within the DOC, because that's who the State plans to call in that respect, could include, I suppose, other DOC staff members. But the testimony of the correction officers and the DOC law enforcement, prison guards, those, they're not gonna testify as experts concerning mental health of the Defendant, nor is the testimony gonna be about the ultimate issue –

THE COURT: Okay.

MR. MCLELAND: -- or intent of guilt or innocence for Mr. Allen. They're not gonna testify to the truth or falsity of the allegations against Mr. Allen, whether or not another witness has testified truthfully, and they're not gonna testify to a legal conclusion. They plan to testify about Richard Allen's

behavior while they were supervising him at the Westville Correctional Facility and the Wabash Correctional Facility and their opinion as to whether his actions were genuine or not, whether or not they believe – and whether they believe he was faking or not. The testimony's gonna be based in first-hand knowledge from personally observing Richard Allen over a period of time. It will be opinion testimony based on their training and experience as correctional officers at the Indiana Department of Correction, where some of them have had specialized training and some will move beyond lay-witnesses into skilled witnesses. The testimony's gonna be helpful to the jury to understand – have a clear understanding of Richard Allen's behavior while he was incarcerated there at Westville and Wabash. The Defense has brought into play Richard Allen's mental health into question, and so they're claiming that the confessions – I think they're gonna claim the confessions are false or at least should be given zero weight because of the conditions in Westville and that those conditions somehow caused a mental health breakdown. Testimony from the correctional officers that were monitoring Richard Allen 24 hours a day, they have daily contact with him, they're able to observe him and his daily actions, this would be valuable information for the jury to consider to have a clear understanding of his situation when he made the admissions. The testimony, in the State's opinion, is not in violation of 701. It will be in compliance with 701, as testimony of a lay or skilled witness. They have – all the witnesses the State plans to call have sufficient experience as correction officers, they have annual training that Mr. Rozzi talked about in how to notice inmates suffering from mental health triggers and symptoms. They also have experience just – within the Westville Correctional Facility, at least, there are mental health wings where mental health inmates are

housed, called the K House and the Span House, and these correctional officers have worked on those wings and been able to observe inmates with mental health illnesses exclusively, and so it gives them an opportunity to observe inmates suffering from mental health illnesses daily and gives them experience in what those inmates go through and some of those mental health issues. When I read through Rule 701, Judge, it requires opinion testimony to be as concrete and factual as practical and reasonably based on first-hand knowledge. The opinions routinely are admitted for the following topics: Mental health condition if the witness has known and personally observed a person over a period of time, that includes the defendant's sanity in a criminal case; the physical condition of the defendant if based on personal observation, including identity, resemblance, body condition, intoxication, state of health, and appearance and age. The opinions are not only limited – or the opinions are only limited in that they must be opinions personally based on some combination of the witness's own personal observations, knowledge, and past experience, and where the witness was an eyewitness. And here we have that, that their testimony is gonna be based on their personal observations and their past experience and that they are an eyewitness. Some of the cases talk about if a lay-witness gives opinion testimony about the perception of what is happening and that perception is based on specialized knowledge, they can become a skilled witness, and the Court is allowed to have officers testify over defendant's objection if they are a skilled witness, if they have experience, not necessarily expert training, but experience that will give the jury an insight into what's going on. The State doesn't believe 702 is applicable in this instance 'cause none of these witnesses are gonna be testifying as experts. The State does not believe the testimony is in violation of

704. They will not be testifying about the ultimate issue at hand here. The ultimate issue is whether or not Richard Allen is guilty or innocent of the murder of A.W. and L.G., and so they will not be testifying about Richard Allen's intent regarding the offense, they won't be testifying about the truth or falsity of allegations against Richard Allen, they won't be testifying to any legal conclusion, and they won't be testifying as to whether or not another witness's testimony is truthful, they won't be vouching for another witness. The State also doesn't think that 403 applies or that this testimony will be in violation of 403. The probative value of the testimony of the correction officers is not outweighed by the danger of unfair prejudice, confusing the jury, misleading the jury, undue delay or cumulative evidence. Again, the Defense has brought into play Richard Allen's mental health, and this testimony will help the jury understand his daily life, his daily actions and functions, and so do not believe it's in violation of 403. There's several cases that talk about these various things, Judge. I know the Court's familiar with the case law on this and so I didn't cite all those. The important one to talk about, skilled witness, I do want to give the Court that case, 'cause I think it's of key important in this situation, we're gonna have law enforcement officers testifying where they have past experience, and that's *Wagner versus State*, 474 N.E.2d 476, that's from 1985, and that talks about skilled witnesses. And so the State would ask – and again, the State will go through questions with each officer to qualify their experience, their training, and happy to do that outside the presence of the jury, but the State will build a foundation with each witness to show the Court that they do have the experience and training and knowledge and testify, if not as an opinion witness, as a skilled witness, Judge.

THE COURT: Okay.

MR. MCLELAND: Thank you.

THE COURT: Mr. Rozzi.

MR. ROZZI: Judge, I would just respond by saying this: The reason why they're gonna bring every one of these people in is because they're gonna want the jury to hear that he said something incriminating in front of that person, that's the whole purpose for bringing them; and so the idea that all – that, by extension, you can then say, "Oh, do you think he was faking it or telling the truth" is asking that witness to conclude his guilt or innocence. And so, you know, those two things are married together, you cannot separate them in this case, or they wouldn't be marching these people in. And so it does violate Rule 704 and the Court should, you know, really think about that, the idea that somebody – let's just use an example that Guard A – Guard Number 1 comes in and says, "Rick Allen told me that, you know, he ushered those girls down the hill and he got scared and he killed them." "Well, do you think that he was faking it when he told you that or do you think that he was being genuine?" That, in and of itself, cannot be separated from that statement. An opinion about that guard – about his mental state at the time cannot be separated from the statement that he just was alleged to have made, and so it is a direct violation of Rule 704 and I'd ask the Court to take that into consideration. I would also point out this: The Department of Corrections has a team of mental health representatives that are assigned to each of these inmates, specifically in this case Mr. Allen. There's gonna be doctors – Dr. Wala, you've already heard from her; Dr. Martin is the second one with – who is on the State's witness list, who is a psychiatrist who signed a bunch of orders to have him injected with Haldol

and other things. There are mental health workers at the prison. All of those people can come in and the State can attempt to establish foundations for them to testify about things that go to state of mind, but in this particular case, they're trying to do it through inmates and guards, and we, of course, believe that's inappropriate. Thank you.

THE COURT: Anything else, Mr. McLeland?

MR. MCLELAND: Judge, that's wrong. That's not what the State is using this information for. We're not gonna have the guards up there to testify about the truthfulness of his statements, that's not the intent. They're gonna testify about his behavior and whether his behavior was genuine or not based on their training and experience. The opinion of experts is not the only opinion that's admissible in court. We have these rules because lay opinion and skilled witness opinion is admissible. They're not gonna testify about the veracity of his statements, they're gonna testify about his behavior and whether or not they thought he was faking it or not. These are people that are able to observe Richard Allen 24 hours a day, that stand in front of his cell, that are with him on a daily basis, and so their opinion is valuable to the jury to understand, as opposed to an expert who's only interviewed Richard Allen once or twice or interviews him once or twice a week. These people are around Richard Allen every day. And so we do believe – the State does believe it's admissible, Judge, and that's all. Nothing else, Judge.

THE COURT: Okay. Well, I mean, based on the argument, you know, the witnesses, unnamed witnesses but the folks that you've mentioned here in the motion, the various prison guards, inmates, law enforcement officers, and other potential DOC staff members, they can clearly testify about their

observations of the Defendant and his behavior, they can testify about what he said, they can testify about what he was doing when he said it. They cannot testify as to whether or not they believe he's guilty or he's innocent, so that's clearly inappropriate; that's not for them to determine, that's for the jury to decide. And if the State can lay a foundation, based on their experience and observations and amount of time that they've spent with him over a period of time, they can testify about their perceptions of Mr. Allen as a skilled witness. I'm – I'd have to hear more from the specific witnesses about whether or not they can testify as to whether they believed it was genuine or not. And by genuine, I mean the statements, if the statements and what – their observations of his behavior, if that is genuine. So you – that's up in the air, because that depends on the foundation that you can lay with those particular individuals, but they can clearly testify about their observations of him and about his behavior and about what he said and what he was doing, but not on his ultimate guilt or innocence, that is not for them to determine. That leaves us then with the Defense – State's motion in limine regarding the *IPAS* settlement.

MR. MCLELAND: Ms. Diener will be arguing that one, Judge.

THE COURT: Okay.

MR. MCLELAND: And then, Mr. Luttrull will be arguing the one on Mr. Tobin.

THE COURT: Okay.

MR. MCLELAND: Thank you, Judge.

THE COURT: Ms. Diener.

MS. DIENER: Thank you, Judge. With regard to *IPAS*, this motion is filed based on past experience in the three days of motions that we heard in

Carroll County. *IPAS* was used, to some extent, with some of those witnesses, specifically Dr. Wala, and they've – it was also used in some depositions of witnesses that the Defense added in a filing on October 12th, which we've not addressed yet. But the *IPAS* settlement is a completely separate lawsuit involving DOC. The State believes it has no relevance in this case. Mr. Allen entered the DOC in November of 2022. I tried to do some research about whether the *IPAS* case has been dismissed, as it was indicated it would be in the settlement agreement. I know there was some extension, that it would go beyond another case, *Mast v. Indiana Department of Corrections,* which I cited in my motion, but in the event that it did extend related to that, it was to be one year after the – that case was closed, and that one has been closed. So from everything that I can find, the settlement agreement is no longer in place. Even if it is, the *IPAS* settlement is about DOC policy, and the witnesses that it was being used to question and cross examine thus far was a witness who doesn't have any authority to respond or participate in the reaction of DOC to what *IPAS* and the settlement was focused upon. So the State is asking that the Court exclude that from questioning, testimony, exhibits with regard to a witness that does not have any responsibility as an employee of DOC or as a legal representative of DOC to deal that issue. The policies of DOC are the policies of DOC; and if a person is an employee, like Dr. Wala was, of Centurion, providing a service to DOC inmates, it is not her place to participate in, necessarily – and she didn't indicate that that was her responsibility – with DOC policy as it relates, and it's just a muddying of the water, it's confusing, and it, I believe, is intended to cast aspersions on DOC for the benefit of establishing that Mr. Allen made certain statements due to his environment, but the State believes that that would be an

inappropriate use of this outside litigation with witnesses that have no place in it. So we would ask for any reference to *IPAS*, unless there is a separate foundation established, that it be excluded from the proceedings.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge. So the *IPAS* settlement was offered up in the exhibit list with – at the pre-trial hearing, so I'm asking the Court to take judicial notice of that document –

THE COURT: I will.

MR. ROZZI: -- at that time. I appreciate that.

THE COURT: Yes.

MR. ROZZI: A couple of things here, the relevance of the *IPAS* statement is that it – well, that it includes a lengthy definition of the – I'm sorry, it includes a lengthy definition of the phrase "serious mental illness", and that particular phrase is one that is relevant to this case because it's the Defense's contention that when Richard Allen hit the doorstep of the DOC in November of 2022, that he had a serious mental illness. And because one has a serious mental illness, they are afforded certain rights in the DOC and, frankly, in the county jails from one side of the state to the other, because the county jails have adopted the same standards as the DOC as it relates to solitary confinement. And so that definition of serious mental illness affords him those rights, which then means that the DOC has to treat him in a certain way as it relates to his confinement. And so the *IPAS* settlement is the seed, essentially, from which that definition, which was broadened frankly to include the very disorder that Mr. Allen had, which is major depressive disorder, when he hit the cell block, but that is the seed that, essentially, created what now is the existing DOC

policy, and so that's the relevance of the *IPAS* settlement. There are a lot of things in the *IPAS* settlement, with all due respect, that – you know, that don't have – there are other things in the *IPAS* settlement that don't have anything to do with this particular case. Naturally, there may be some facts in there about things that just aren't related to this case, like about other cases and the circumstances that were created with the plaintiffs who existed. But the definition of serious mental illness and those privileges and rights afforded to inmates that have those are part of that settlement, which was then – that information was then taken and, essentially, rubber stamped into DOC policy, which will also be an issue in this case and I've offered up some of that to the Court previously in the July hearings; and so that's the reason why we think it's relevant and that's the reason why we think we ought to be able to educate the jury about how you treat offenders, inmates, in this case a pre-trial detainee in a solitary setting and what types of mental health services that should be afforded to them, all of which, of course, would be relevant to his state of mind, the credibility of the things that they claim that he said that were incriminating, now even these actions that these guards, apparently – you know, these guards can come in and testify about, "Well, he was genuine about this" or "He was – you know, he was faking it or he wasn't." All of those things are relevant and connected with the way he was being treated at the DOC in terms of his solitary confinement and how that was handled. So those are the reasons why we're asking to be able to put the *IPAS* agreement in. If there's – to the extent we need to redact some of the factual information in that agreement that pertains to the plaintiffs in that case and their circumstances, that's understandable to me, but the definition of "serious mental illness" I think stems from that agreement and

has been carried on; and frankly, you'll hear testimony from DOC officials, a couple of which were deposed just recently, that acknowledged those – that acknowledged that settlement agreement, the significance of that settlement agreement as it relates to the DOC's current policies, and the fact that the definition of SMI is consistent with what's in that settlement agreement. And in fact, in some of the DOC policies – I don't have the policy numbers fresh in my head, I think one was 2.22, but we offered three of those up I believe at the pre-trial hearings – in one of those policies, there's actually a reference to the *IPAS* settlement. So from that standpoint, we think it's relevant and it helps tell the whole story about the timing of how all this came about, and so we'd ask the Court to consider that. Thank you.

THE COURT: Anything else, Ms. Diener?

MS. DIENER: Judge, by his own admission, he says the DOC policy already contains the definition of seriously mentally ill, which is actually broader than what is referenced in the *IPAS* settlement. Again, how does – how is the *IPAS* settlement helpful or relevant? It's confusing, it's a distraction, it's another litigation. Mr. Allen came in at a time when the policy had already been modified as a result of *IPAS*; so, therefore, the change did not happen while he was there, it had no impact on how he was being handled or treated. The State's not objecting to DOC policy being referenced that was in place at the time that Mr. Allen was there. Outside of that, again, not relevant and confusing. We're asking the jury to take on a lot of information, and I ask the Court to find that those are not relevant. In addition, there are additional rules that – of evidence that speak to the use of documents from litigation outside of the case at hand, I cited those in the motion. I think those are also something to be considered by the Court

when talking about relevance, and the State would have nothing further.

THE COURT: Well, if the purpose of the settlement agreement is to educate the jury on how you treat an inmate in a mental health setting as it relates to this state of mind, does the pol – does DOC policy already incorporate that?

MR. ROZZI: It does, in part, Judge.

THE COURT: Okay.

MR. ROZZI: There's a – may I continue?

THE COURT: Yes, yes.

MR. ROZZI: Okay.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: The concern I have is that the jury might view that DOC policy as having been created on a certain date, whatever that date is on the policy, and then everything from that point forward is all new and it's – you know, it's subject to – "Hey, this is – the policy was created in 2022, and so we're just learning, we're working under the policy in its infancy stages," when, in fact, there's a long history of where this policy came from. That lawsuit that the *IPAS* settlement stemmed from was like a 2012 lawsuit, and I can't remember exactly while I'm standing here, I'm not great with dates in some respects, I want to say 2016 was the date of the court order that Judge Pratt in the Southern District issued the court order finding the DOC, Indiana Department of Corrections, responsible for violating the rules as it relates to – well, they found them responsible for violating the Constitution as it relates to cruel and unusual punishment of offenders in the DOC, and so there's a whole history of how we got here. And I think that the jury should be able to know that this isn't a matter

of first impression for the DOC, this is something they've been dealing with a long time, and they can't get it right, so that's why I'm asking to show them the whole story. Thank you.

THE COURT: Well, I understand the argument and I appreciate the argument, but the settlement, *IPAS* settlement agreement, is not relevant to the issue at hand as to whether or not Mr. Allen did what the State alleges that it is alleging. I mean, if you can educate the jury within the policy and confines of the DOC, then that's in the policy and you can do that, but admitting the *IPAS* settlement with that lawsuit that ended in July of 2020, when he didn't get into DOC until November of 2022, is not relevant, it's inadmissible under a bunch of different – particularly just the whole litigation, there's no need to have all of that litigation inserted into this criminal matter. So you can do it other ways, and I would allow you to do it in other ways other than, I mean, getting in the entire settlement. If the DOC policy that was in place at the time Mr. Allen was in there defines the serious mental illness, then it defines serious mental illness and how the DOC should be treating folks with that condition. So I'll grant the State's motion in limine regarding the *IPAS* settlement.

MR. ROZZI: May I ask for a point of clarification?

THE COURT: You may.

MR. ROZZI: Judge, just to make sure, you're only prohibiting us from putting the actual document in; right? We can make a reference to settlement, which is –

THE COURT: Well, the document and references about a lawsuit. There's no need to reference a lawsuit if it's in the policy now that you can explore.

MR. ROZZI: But that is – those – the policy references the *IPAS* settlement, it literally references it in the –

THE COURT: Well, there's no need to reference the policy settlement language. If the issue that you keep harping about is the educating the jury on how you treat an inmate in a mental health setting as it relates to his state of mind and that he had a lengthy history or a definition of serious mental illness, you can focus on that without getting into anything about this *IPAS* settlement, without anything about this lawsuit, 'cause it's contained within the policy of the Department of Correction, according to both of you arguing.

MR. ROZZI: But you're not gonna require me to redact that from the policy; right?

THE COURT: Why do you need to do anything with the policy other than what I just said, which is –

MR. ROZZI: Because I need to tell the jury the truth, I need to educate them about the truth –

THE COURT: Okay.

MR. ROZZI: -- and that is part of the history of that policy, it's not – didn't just –

THE COURT: You don't need the history of the policy. You've got the policy.

MR. ROZZI: Thank you.

THE COURT: You're welcome. That leaves us then with the State's motion in limine regarding Defense witness; and I understand, Mr. Luttrull, you'll be arguing that.

MR. LUTTRULL: Yes, Your Honor. Thank you.

THE COURT: And the Defendant filed a motion – a response to that motion on October 7th.

MR. LUTTRULL: Yes, Your Honor. The issue is not whether Mr. Tobin is an expert, but what is his area of expertise and is that area of expertise relevant and is it helpful to the jury. Mr. Tobin is a metallurgist with a bachelors degree in metallurgy and 27 years with the FBI as a metallurgist. He is an expert metallurgist. He is not a firearms expert. He has never conducted a firearms identification exam. He has never been trained in firearms identification. It was some years ago but, to my knowledge, this hasn't changed, I believe eight years ago he was asked in court if he had ever been trained in firearms identification. "No. It would be – it would not be worth my time." In a deposition eight years ago, and I don't believe it has changed, he testified that he has never conducted research on firearms identification, what he has done is he has researched research. Mr. Tobin said in his deposition in this case that he could opine on the flawed methodology of the State's witness, in fact, the flawed methodology of all firearms experts. The Court ruled that the State's firearm exam testimony is relevant and probative, the probative value is not outweighed by any undue prejudice; therefore, Mr. Tobin's testimony is not relevant and it would not be helpful to the jury. He would be opining not that the State's expert got it wrong or is mistaken or failed to conduct a proper exam or could have done a better exam or documented a better exam if she had done this or that. He would be testifying that she cannot ever conduct a firearms identification and no other examiner could, as well. Helpfulness, Your Honor, is the touchstone of admissibility under Rule 702. *Weedin versus State*, 900 N.E.2d 2009, is a

reference for that. It's not a case that dealt directly with – it didn't deal with firearms, but it dealt with expertise. If the topic of the expert's testimony does not address a fact in issue, the evidence should be excluded. Irrelevant evidence cannot assist the trier of fact, that's what the – I believe it was the Indiana Supreme Court said in *Ross,* 516 N.E.2d 61. It's a far different case, a far different set of issues, but it was an area where a rape trauma expert was prepared to testify what type of rapist the defendant was. The rape trauma expert had experience and had the expertise to answer the question, but that question was not an issue the jury was to deal with. It's the same type of analysis. The issues Mr. Tobin would address are not issues that would be helpful to the jury. An expert who qualifies as an expert to some matters can state an opinion on a matter – cannot state an opinion on a matter as to which the witness has no special knowledge, that's the *Weisheit* case, if I pronounced it correctly, 26 N.E.3d page 3 – 3 , page – I believe page 10 is where that reference is from, indicating that you may be an expert and you're qualified to testify to some things, but not to matters in which you have no special knowledge. In *Turner versus State*, 2011 Indiana Supreme Court case which established – addressed the very question of firearms identification testimony. *Turner* is found at 953 N.E.2d 1039. The proponent of the expert testimony bears the burden of establishing reliability of the scientific principles upon which the testimony is based. We believe that under the law and under a definition of – in looking at both 702 and 403, Mr. Tobin would not be helpful to the jury and it would be – lead to confusion, and he's testifying in an area in which he is not an expert. He has testified, as Mr. Rozzi has pointed out in his pleading, many times around the country, primarily in *Daubert* or *Frye*-type hearings. I don't think – I know

he has testified in jury trials, but not – but I think that's fairly rarely. It's primarily to testify to the threshold issue, is this evidence admissible. It would be confusing to the jury if he were to testify, Your Honor, on the question that all of these firearm examiners are junk scientists, which is a phrase that he has used in the past. There are four individuals listed, combined by both sides, as addressing the issue of firearms in this case, two from the State, two from the Defense. Three follow the AFTE theory of identification, at least in large part, and are part of the – a traditional AFTE firearms identification process. One of those four is different than the others. And I believe that Mr. Tobin's testimony would not be helpful because he is just not an expert in this area. Thank you.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge. As it relates to Mr. Tobin's expertise, I'm gonna tender to the Court Defendant's Exhibit A. May I approach?

DEFENDANT'S EXHIBIT D OFFERED

THE COURT: You may. D, we're up to D.

MR. ROZZI: Sorry about that.

THE COURT: And it is what?

MR. ROZZI: I'm sorry?

THE COURT: It is what?

MR. ROZZI: Defendant's Exhibit D, and this is a copy of Mr. Tobin's CV.

THE COURT: Oh, okay. Any objection?

MR. LUTTRULL: No objection, Your Honor.

THE COURT: All right. Without objection, D is admitted.

DEFENDANT'S EXHIBIT D ADMITTED.

MR. ROZZI: Judge, you're not holding the CV yet, so I'll wait until that happens, then I'll talk about that just briefly. Does the Court have the exhibit?

THE COURT: Yes, I do.

MR. ROZZI: Thank you. So with regard to Mr. Tobin's CV, I'd first direct your attention to the education there at the top of the CV, which indicates that he has a bachelor of science in metallurgy, a master of arts in special studies, in graduate studies he has material science and engineering from the University of Virginia. It is true that he has a background in metallurgy. Metallurgy is the study of physical and chemical properties and how they combine with each other and how they react to each other. It is a subdiscipline of tool mark identification, it's really kind of one of the foundations of tool mark identification. Firearms identification is also a subdiscipline of tool mark identification, so I have a sense that this Court has probably been through this academic exercise before; but because I haven't been here and been a part of that, I'm gonna try and explain this the best I can. I think the way to think about this discipline and these sciences and however you want to define them is to think of tool mark identification kind of at the top and then, underneath that, there are many subdisciplines that are all kind of interconnected, it's kind of like a network of subdisciplines. Metallurgy and firearms identification are two of those. Mr. Tobin has an extensive history in working in the field of metallurgy. Most importantly and most specifically from a relevance standpoint, I would direct your attention to the professional experience that's at the bottom of the first page of Exhibit D; and what you'll see in there is that Mr. Tobin worked with the Federal Bureau of Investigations as a special super – supervisory special

agent, he was the manager of forensic metallurgy operations with the FBI laboratory, and his testimony, foundationally, would be that he worked for that – for the FBI for 27 years and he worked as an expert in their laboratory for 24 of those 27 years, dealing with tool mark – the trade of tool mark identification and with this specific background in metallurgy. So in terms of his skill set, you know, those things I think are noteworthy to the Court. Obviously, this CV is quite lengthy, you can see that he's published in many different areas. I'm not gonna belabor the Court by going through all of those, but here's what I would say, I actually called Mr. Tobin back recently, 'cause I had cited in the motion that he had participated or testified I think in over 200 – over 200 times in court settings. It turns out that he updated that. I was trying to be really conservative, but he said it's 309 as of the last couple weeks, 46 states. He would testify foundationally, if he were allowed to testify in this case, that that's been in the District of Columbia, Puerto Rico, and he's also provided congressional testimony regarding issues related to the firearms identification practice. Maybe most importantly, in terms of his background and his skill set, is the fact that he has participated and been – contribute is probably a better word – to decisions that have been made as it relates to the reliability of firearms identification, the discipline of firearms identification. And even most recently, in the case of *Supreme Court of Maryland v. Abruquah*, and that citation is 483 Maryland 637, that's a 2023 case, so it's 483 Md. 637, 2023 case from the state of Maryland, and this case, this opinion was issued in June of 2023. And essentially, what happened in that case is it was a murder case and there were some bullets that were recovered, and it's kind of more of a traditional circumstance, where the State offered up the bullet fragments from the projectile and, basically, their

expert came in and said – their firearms identification expert came in and said, "Those bullets were shot from that gun." Kind of the most traditional form of testimony in these types of firearms identification cases or the most common. Of course, Mr. Abruquah was convicted, that case went up to the high court and, essentially, what the Supreme Court said in about 45 pages of an opinion is that the State went too far, the State's examiner went too far, and in fact, the bases – the scientific bases upon which their examiner relied upon was not reliable enough, that the examiner could just come in and make these broad-based statements that those bullets came from that gun, which, of course, is what we have here. We have an examiner that's gonna say that there is sufficient agreement between the cartridge, the unspent cartridge that was collected from the crime scene in this case, and the firearm that was collected from Mr. Allen's home. And Mr. Tobin did testify in that case and the Court noted his testimony and the information that he provided in the case – and I'm just looking here at my notes, give me one second, I'll direct you to the area in the decision where that exists, because it is kind of a lengthy decision. It would be on – well, when you get there, I'll give you more – when you pull this case up, at some point. So it'd be page 673/674 would be the area where you're gonna find the analysis as it relates to Mr. Tobin's opinions. But essentially, what the Court said at the end of the day was, is that this process that is the foundation for firearm identification is – has been called into question and there are legitimate concerns about that process from one coastline to the other in this country, and that the Court was not comfortable, because of those concerns, in just allowing the State's experts to come in and make these broad, sweeping statements. The point of all this is – I'm trying to get to the point, I'm sorry – is that the Court

didn't rely on his testimony in that decision, which I believe bolsters his credibility as it relates to this discipline. There is also this: Dr. Eric Warren, Ph.D., from Memphis, Tennessee, will be likely testifying in this case and you might note the State, in its own motion in limine, actually mentions Dr. Warren as having – or as being a part of the same fraternity as the State's firearm examiner, Melissa Oberg, that fraternity being AFTE, the Federation of Firearms Identification. Frankly, all these acronyms start to get a little bit confusing at times, but – Federation of Tool Mark Examiners; right? Thank you. Sorry. Dr. Warren has been retained by the Defense, and he has been deposed by the State more just recently, and the State has mentioned that, you know, he and Mrs. Oberg are part of the same fraternity, that is true, and those two, essentially, believe in the same concepts, and so there's no reason why the Defense should be able to bring in Mr. Tobin, who's not part of that organization, to critique that organization. And as it turns out, I would offer up – give me one second – I'm gonna offer up as Exhibit E – Ms. Williams, mark this, please. Thank you – Dr. Warren's CV, and I would just specifically draw the Court's attention to – one second here – page – oh, you have a copy of this. Ms. Williams told me earlier, when she made a copy for me, she had given one to you in advance, and so I think –

DEFENDANT'S EXHIBIT E OFFERED

THE COURT: I haven't looked at it, it's just sitting here.

MR. ROZZI: Okay. Well, the problem is, is I highlighted some –

THE COURT: That's all right.

MR. ROZZI: Is that okay with –

THE COURT: That's fine. I don't care.

MR. ROZZI: But the bottom of page 5, there's a reference here that he is a member of AFTE, Association of Firearm and Tool Mark Examiners, and then, maybe more importantly, at the top of page 6, the CV says he's serving on the Board of Directors and the Editorial Committee, and he previously served on the Electronic Resource Committee and Chair of the Unpublished Research Subcommittee. I'm not really sure what that means, but what I do know is he's on the board of AFTE, he is one of the AFTE board members.

THE COURT: Any objection to Defendant's Exhibit E?

MR. LUTTRULL: No, Your Honor.

THE COURT: All right. Without objection, then E is admitted.

DEFENDANT'S EXHIBIT E ADMITTED

MR. ROZZI: And so, in taking Mr. Warren's deposition – in fact, Mr. Luttrull was the one that took Mr. Warren's deposition, which occurred on October 3rd of 2024 – there was an opportunity to engage Mr. Warren, who is on the board of AFTE, as to Mr. Tobin's credentials and his background and how those things are either helpful or not helpful as it relates to the discipline of firearm identification. And I would direct the Court's attention – I'm sorry, I'm gonna mark as Exhibit F a copy of Dr. Warren's deposition dated October 3rd, 2024, this was ordered up again by the State. Mr. Luttrull and myself participated in that, along with Dr. Warren, obviously. Would offer that to state – and I'm gonna –

DEFENDANT'S EXHIBIT F OFFERED

THE COURT: Any objection, Mr. Luttrull?

MR. LUTTRULL No, Your Honor.

THE COURT: All right. I'll show, without objection, F is admitted.

DEFENDANT'S EXHIBIT F ADMITTED

MR. ROZZI: Specifically, Judge, as it relates to Mr. Tobin's set of – skill set and expertise, I would direct your attention to page 60 of that deposition. Let me know when the Court's there.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: So page 60, line 5, this is me asking the questions at this point, the question is, "So is having a background in statistics helpful to understanding the discipline of firearm identification?" Dr. Warren's answer, "I would not say that statistics is more important that biology or chemistry or machining or engineering or things like that. It is certainly important and I think will become more and more important as we move towards the shift in our – the way that we testify and our testimony language because" – and then I interrupted him, I'm trying to get through this, so I know the Court can read through this, but moving down to line 15, he references the NIST, which is kind of a new technology that's on the forefront of firearm identification in terms of how they look at – it's like microscopic images and 3D and things of that nature. But the point is, he acknowledges, between lines 5 and 12, that a background in statistics is important to understanding the firearms identification discipline. And if you would note in Dr. Warren's – I'm sorry, in Dr. – or in Mr. Tobin's CV – and I'm looking for that notation, I had one of these that was highlighted and now I'm not finding it – but he also has a background in statistics. Page 1 of his CV in the middle there under "Additional courses and symposia", he had taken Statistics 1 and Statistics 2, both at Northern Virginia Community College, and I believe – yeah, page 2, "Professional affiliations", he's a member of the Statistical and Applied Mathematic Science Institute. He is steeped in the area

of statistics as it relates to his education, and so that's one of the reasons why I was asking Dr. Warren about trying to inquire about whether or not that was important. Moving down, page 60, line 19, I asked him again, "So you're – you're referencing, too, that – too, that – and suggesting that having a background in statistics might be more helpful or more – might be helpful because things are trending in that direction in terms of courtroom testimony?" His answer: "Yes, sir. Absolutely." That's the trend. There is an on-going movement in this industry, firearms identification, to somehow codify some statistical approaches that matter and that have meaning and that makes these – make these conclusions that are being drawn in laboratories across the country meaningful. It's similar to what you would see in a DNA analysis, where they're starting to apply numbers and ratios and percentages to findings, and so that's kind of the background for what we're talking about. Give me one second. I then go on – in page 61 and 62, I'm just summarizing – to talk to him about minimum qualifications that are required for these firearms identification technicians like Ms. Oberg; and what you'll find in there is that there is kind of a best practice that those individuals would at least have some kind of a college degree in a hard science, like physics or chemistry or biology, but there is no minimum requirement in labs across this country. There's no minimum standard, so you can have a high school education and actually be a firearms examiner; I mean it's not something that requires any specific education other than going through their own training course. So then moving one – one second. Page 63, I questioned him about – actually page 62, I'm sorry, line 13. My question is: "Have the critics of that group of people" – and I'm talking about this critical community that we were talking about just before this in the depo – "Have the

critics of that group of people – have those critiques helped advance the tool mark discipline over the course of the past several years?" His answer: "Yes, it certainly has, because I would actually say going all the way back to the early 2000s with the – a lady by the name of Adina Schwartz, who was a law professor at John Jay College, she was really one of the first big vocal proponents – or vocal critics I should say of our field, and that was actually a lot that Mr. Nichols responded to." He's talking about Ronald Nichols, one of the experts that the State had referenced in their expert – or in their witness list. Then he goes on to say, "They had a lot of back and forth between the two of them, and in general, as frustrating as it may be from a practioner's standpoint to hear that, looking at it, you know, taking a step back and looking at it scientifically, it does improve the field any time somebody from outside our profession that looks, you know, with a bigger, broader foundation than us is able to provide insight that maybe we don't see when we're down in the weeds working evidence, so it certainly has advanced the field and continues to advance the field forward." The summary here is that he recognizes this critical community that Mr. Tobin is a member of and that it is a benefit to the field of firearm identification. My next question: "So do you think that would be important moving forward and beyond today, that the body of people, those individuals that exist to kind of continue to move this field in a more positive way forward?" His answer: "Yes, sir." And he goes on to explain why publications can be helpful, things like that, critique – publications that critique their industry, that kind of thing. Page 63, line 19, question: "And do you believe that Bill Tobin is at least one of the individuals that's part of that larger body or that larger community of critics?" Answer: "Yeah, generally, he is one – or he is of the critics that are out there right now. I

would say he's not – he's not the most common person that I'm hearing about, but yeah, he's certainly always mentioned with the rest of that group of critics." Then I go on to question him on page 64 with tool mark or the fire – the – "With firearms identification, is it helpful for lab technicians to have an understanding of the mechanics involved with these tools, the chemical processes involved, and the way these tools react when they touch other surfaces, i.e. metallurgy?" And his answer is, "So just for point of clarification, technicians, are we talking about like an IBIS technician? Are we talked about like a" – and we go on, and I said, "Yeah, I'm talking about firearms examiners." And his answer is, "Yes. So that is part of the reason for the two-year – the lengthy training process. It's so that you can be taught and see firsthand and get hands-on experience with tools, with the way they mark their substrate and their work pieces." So he's clearly suggesting that having a background in metallurgy and understanding the way tools work with each other and these metals is highly important to the process of training firearms examiners. And then I just get right to the point with him, page 65, line 4, "I'm just going to ask you a specific question: Would it be helpful to have an education background in the field of metallurgy in the course of being a firearms examiner?" His answer, "Metallurgy could be very helpful, yes." And then he goes on to talk about hard sciences and those kinds of things. And I said, "Can you classify metallurgy as one of those hard sciences?" And his answer, line 19, is, "Yes, you could classify metallurgy as one of those." And then we go on, page 66 – I'm trying to move along, but all this is really important to educating the jury about Mr. Allen's defense. Page 66, lines 10 through 17, there's a discussion there about PCAST. This Court's probably heard about PCAST, the President's Counsel of Scientific Technicians or Advisors, basically,

it's a group of people that the President has employed, they're a bunch of scientists, but essentially their task is to look at other disciplines and processes and sciences and be critical of them as to whether or not they actually do meet the minimum standards required by the scientific method. So it's kind of like the President's right-hand men, they're a bunch of his scientists, they basically say, "We do believe in these processes" or "We don't." Well, PCAST, as Mr. Tobin would testify, has routinely and continuously acknowledged that the discipline of firearms identification is not a science, and there would be testimony that that is the position that PCAST has taken over the course of time. It's recognized as a discipline, that it's not recognized as a science, because firearm – the discipline of firearms examination does not meet the scientific process in many standards. So Mr. Tobin, of course, being very familiar with PCAST and those circumstances, again is qualified to testify in a case like this. Then I go on, page 66, line 18, I'm asking Dr. Warren about whether or not these – there's a healthy dialogue that exists at this time as to whether or not the firearms identification business is a science, and he acknowledges to me that yes, there is a healthy dialogue going on, that that still exists as we sit here today; in other words, that's still in dispute. So I'd ask the Court to read page 66. And trying to move forward, more on 67, line 8, my question is: "So then, you do agree that there's an on-going debate between the two bodies of communities or people that as to whether or not this stuff should end up in a courtroom" – in a courtroom. So now we're talking about something else, and I'm gonna get to that in a minute, but the question is: "Is there a healthy debate about whether or not this stuff should end up in a courtroom?" And his answer is, "Yes, sir, that is correct." This is the – a board member on the – an AFTE board member that's telling us this. So

Mr. Tobin, being steeped in all of these things, it's our position is qualified to testify as it relates to the scientific principles of metallurgy and the principles that define or support the back – or the discipline of firearms identification. I'll move on, give me one second, please. I also mentioned the National Academy of Sciences in my response to the motion in limine, that in 2008 and 2009, those – that Academy was critical of the discipline of firearms identification in that the laboratories – there's basically a recommendation from the National Academy of Sciences that the laboratories where all this work is done should not be government-based laboratories, they should be independent laboratories. And I think even Mr. – you can look at the deposition of Dr. Warren, but I think even he acknowledged that that would be the best circumstance, that he – either that or he said he supports their recommendation, which is still not the case. These laboratories are run by law enforcement agencies, and there's been a big concern globally that that's a problem, so I referenced that in my response. Mr. Tobin would, essentially, walk into the courtroom in Carroll County and he would explain his history, his educational history and his work history, working in the FBI lab for 25 years in the tool mark business, and he would essentially explain to the jury that there is an underlying process that supports the discipline of firearms identification, and that is a process that I would argue that even Ms. Oberg is not intimately familiar with. She is a technician; she, essentially, has been trained to carry out that process, to execute the process. She is not part of the establishment of the process of tool mark identification. Earlier, what I heard, ironically, was that this gentleman who generates composites that law enforcement authorities use to seek suspects, they issue those publicly, they ask for people to look at those things and they said, "If you see somebody that looks

like that or if this helps generate a thought that might – where somebody might be a suspect in this case, tell us about it, 'cause we might investigate them." What I heard was, was that was a discipline and it was a tool, it was a tool to help law enforcement. What you will hear from Mr. Tobin is not that this is all junk science, you will hear him testify that firearms identification is also a tool that is used by laboratories across this country. The problem is whether or not the conclusions drawn from those examinations are reliable in courtrooms like this and should they be used to assist juries in determining guilt or innocence? That's where the battle lines are in the industry. Mr. Tobin is on the one side of that battle line and has been for a long time. The State's examiner, I presume, is on the other side, although I don't know that she's even been questioned about that. In particular, I would also note to the Court she doesn't even work for the State Police anymore, she's working in private industry at a medical device company or something at this point, I'm not really sure where in this. But Dr. Warren is still in the industry, he supports Mr. Tobin's credentials, believes that Mr. Tobin's work in this field has been helpful in advancing the industry, and so would ask the Court to take those things into consideration. I do think that the concept of understanding the process which generates a result in a laboratory setting is relevant to understanding the meaning or the result of the final product. And that is to say for jurors to understand how a woman in this case can come in here, Ms. Oberg herself, and say, "I looked at – under – did some microscopic images of cartridges and firearm and these – you know, all these tools, and I drew a conclusion that that cartridge was cycled by that firearm," I think it's only fair that the jurors would have some information that would help them understand the process that supports – or the foundation that supports

that process. And I'll leave you with these examples, I'm just thinking practical examples in our everyday circumstances. The first one that came to mind, I happen to be – I happen to do a lot of DUI law – is the certified chemical testing machine. And anybody that's ever presided over a certified chemical test case or cases in a – on a routine basis knows that if there's a trial in those cases, one of the things you might hear is an expert testify about what's going on inside that machine that helps generate a number, whether it's .10, .15, or .20 or .25. Those are just numbers generated by a computer. What you really want to know is what happens when someone blows into that thing and the breath starts moving through all these tubes and filters, that's important to know, it's fair that a jury knows that. And there's no difference between that circumstance really and this circumstance. The second thing that came to mind as I was driving this morning are K9 searches. When a dog – when an officer pulls a dog out of a police car and starts running them around a car and the dog sits and the police officer now has the right to move into that vehicle, to essentially search that vehicle and cross a privacy boundary, a Constitutional boundary, could even be a house, I think it's only fair – and it happens in courtrooms across this country – that people get to hear how these dogs are trained, where they come from, how credible are the kennels, you know, what are the dogs trained to do, are they trained to detect bombs, are they trained to detect drugs, those kinds of things. It's helpful, it tends – the idea that you would understand a process tends to prove or disprove the legitimacy of the process, that's why it's relevant. The only other examples I could think of, polygraph exams did kind of come to mind. Another one, as I was listening to Mr. Plantz, was it? – Mr. Plantz testify today, he was talking about how long the interview process takes before he even puts

pen to paper. It's exactly like a polygraph exam; right? The polygraph examiner sits there for an hour – a good examiner, for a couple of hours and questions the witness or whoever's being examined in that case before the exam even starts. It's the most important part of the exam. And I think that, to the extent that somebody wants to understand that process – in most cases in those circumstances a judge, because we're not introducing this before the juries – you'd want to know the process, because that's the most important part of it. So those are some thoughts. Radar guns come to mind, I know you deal with those from time to time. Nobody ever has the money to really bring an expert in and talk about what goes on inside that little gun when you get your 55 in a 45 speeding ticket, but it has happened, there's records in courtrooms where that's happened. I think all those things are good analogies to why Mr. Tobin's credentials matter in this case. And I will leave you with this: Mr. Luttrull I believe it was, in his motion in limine, cites as authority – he didn't talk about it today, but he cited it in his motion, the case of *State of Indiana versus Caden Smith*, it's a trial-court level case out of Marion County, one Mr. Baldwin actually was involved in, just coincidentally, 49D20-2112-MR-36708. He cites that Court's ruling as authority for you to deny Mr. Allen the right to bring Mr. Tobin into the courtroom in Carroll County, and the ruling says – the order from January 29th, 2024, earlier this year, "The State moved in a motion in limine, in paragraph 5, to exclude the testimony of Defendant's witness, William Tobin. The Court heard argument in January 26th, 2024, at a pre-trial hearing. Defendant witness has not tested or reviewed any of the evidence in this cause. The Defendant will have the opportunity to cross examine the State's witness to present his defense at the shortcomings of firearms examination. The Court now

grants the State's motion in limine paragraph 5." That's the authority that you were offered in the motion, a one, two, three, four, five, six-line order from the trial court in Marion County. Well, if you want to do that, that's fine. I'm gonna offer the Court up *People versus State – or People of the State of Illinois versus Ricky Winfield*, Circuit Court of Cook County, Criminal Division, 15CR14066-01. This is my copy. I've got the Court a copy. Mark this, please, for me. Thank you. Defendant's Exhibit G, I'd offer this up to the Court.

DEFENDANT'S EXHIBIT G OFFERED

THE COURT: Mr. Luttrull, any objection?

MR. LUTTRULL: I have no objection to you reading the extensive opinion by the judge in Cook County, Illinois.

THE COURT: All right. I'll show G is admitted without objection.

DEFENDANT'S EXHIBIT G ADMITTED

MR. ROZZI: Thank you. Extensive and well thought out.

MR. LUTTRULL: I object to well thought out, I don't endorse that, but it's very long.

MR. ROZZI: You know it's –

THE COURT: Okay.

MR. LUTTRULL: I apologize to interrupting you, Mr. –

MR. ROZZI: Fine, Jim, no problem. Page 35 – I'm gonna try to get the Court to the heart of the matter. Page 35, the top, same argument in *Winfield* basically, did a bullet – did bullets come from a gun, that kind of thing. It's all pretty much the same playing field with these cases. In part, the Court says, "The Court found the testimony, declarations, and corresponding Defense exhibits of the following Defense experts credible and helpful in establishing

firearms identification evidence is no longer widely accepted within the meaning of *Frye*, including, but not limited to" – and it could go on and on, I'm gonna get to *Frye* in a second – section D or paragraph D, also relevant. "The Defense criticisms of firearm identification evidence were helpful, highly persuasive, and credible in this Court's finding that firearms identification evidence is nothing more than a mere hunch as that term has come to be known as under Illinois jurisprudence." Then he goes into paragraph E to talk about general acceptability, which is one of the scientific processes that Mr. Tobin would testify about, and basically indicates that – they don't indicate, they – he – the judge here states that there are concerns about whether or not it's generally accepted in the scientific community. And then, page 36 – you can read this, Judge, in your own time. Page 35 and 36 are really where you need to go to see the relevant portions of that as it relates to what Mr. Tobin would be contributing to this case. That, too, is a trial court opinion. I'm not gonna sit here and suggest that somehow it's primary authority in a case like this, but it certainly is much more meaningful than what went on in Caden Smith's case – no disrespect, Mr. Baldwin – down in Indianapolis, where you got a one line – a six-line order. This is a thought-out opinion that contains arguments on both sides, and that's what we're pointing out here. It's not what's true, that's not really the point. It's not who's right, because nobody's really right, we'll never probably know, but it's about what those people should hear about one of the most important pieces of evidence in his case. There is an on-going debate in this world about the reliability of the methodology used by Ms. Oberg in her firearms identification conclusions, and we're asking the Court to allow us to tell the jury and explain to them what it is that is – explain to them the process that's employed which

helps her come to her conclusions, and that's why we think it's relevant. Thank you.

THE COURT: Mr. Luttrull, anything else?

MR. LUTTRULL: Yes, Your Honor. The Illinois – the Cook County trial court opinion that you have before you, as well as the Maryland Supreme Court decision, at least two things about those: Number one, they're outliers when you look around the country in terms of where the majority of appellate courts are today across the county, it's not with the State of Maryland and it's not with the judge in Cook County, Illinois. It's also very noteworthy about those two cases, Mr. – I believe Mr. Tobin was involved – was he involved in the Cook County case? I think he –

MR. ROZZI: I don't think so.

MR. LUTTRULL: He – I believe –

MR. ROZZI: No, I don't think so.

MR. LUTTRULL: He may have testified, he may not have, but those were *Daubert* or *Frye* hearings in those courts where those testimonies took place. Mr. Tobin testified in the Maryland court not in front of a jury, but in what they call a *Frye-Reed* hearing, which is Maryland's version of 702. The – that's very different than bringing someone in to talk in front of a jury. Statistics, I don't believe that statistics, certainly the statistics that Mr. Tobin has some area of study in, is going to be relevant in this case. Why the reference to high school education? There's no – accreditation standards around the country require college education in a science to be employed as a forensic scientist. Mr. Warren, in his deposition, may have acknowledged that some critiques have helped the industry, but that's a far cry from him endorsing Mr. Tobin and Mr.

Tobin's views on firearms, which it's clear from the deposition that he does not endorse. He did not endorse Mr. Tobin's specific efforts or testimony or work in this area, he only said a group of critics generally have helped the industry improve. That is not an endorsement that the jury ought to hear from this individual. The fact that there may be a healthy debate or what Mr. Rozzi called a healthy debate and Mr. Warren – Dr. Warren acknowledged is going on has nothing to do with the role of a jury and the role of an expert witness in this particular case. And I think the issue of the difference between looking at a trial court's decision – I only referenced the Caden Smith case as an example of a very recent ruling involving him appearing before a jury. The Cook County case, he was not appearing before the jury, he was appearing – if he did appear in that case, that's a threshold issue, it's a very different situation than having this level of confusion enter into the courtroom in front of the jury. Thank you.

THE COURT: All right. Well, clearly, I need to take this under advisement to review all of the exhibits and the depositions and the order and the CVs, so I will take it under advisement and issue a ruling in due course.

MR. ROZZI: Very good, Judge.

THE COURT: Is that the conclusion – I don't have any other written motions. Before we recess then and travel down to Carroll County, is there anything else from the State?

MR. MCLELAND: Judge, I do have one topic and I'm not sure how to address it and so I didn't put it in the motion, but from the closed hearing that we had a couple weeks ago, it was my understanding that the parties would submit a – kind of a narrowed exhibit list to each other, to narrow those exhibits to exhibits that we knew were definitely gonna come in so we could focus on

those exhibits, 'cause as the Court can imagine, hundreds and hundreds of exhibits.

THE COURT: Um-hmm. (Affirmative response)

Q And we both agreed on October 1st as being that date, and that's fine, we've done that. The Defense was kind enough to attach their exhibit – or their witness list with their exhibit list, as well, and that's fine, but they've listed several new witnesses that weren't on any prior witness lists, and if it was a foundational witness or a witness that observed something in the case, I wouldn't care all that much, but a lot of the witnesses it looks like are expert witnesses or are gonna testify to something very specific in regards to the case. And so on October 3rd, I sent an email to Mr. Rozzi, asking him, "Hey, these are new witnesses. What are they gonna testify to?" A couple of these witnesses, I was able to look them off the Internet – look them up on the Internet, they looked like experts in the digital field. I got an email back from Mr. Rozzi on October 4th, basically saying – well, I'll just be specific, "Neil Broom and Stacy Eldridge. Knowledge of data contained on phone extraction of L.G.'s phone for Neil Broom. Stacy Eldridge, knowledge of data contained on phone extractions from August, 2024." That's all I got. The email goes on to say, "We intend to deliver a thumb drive to your office later that day with exhibits that we intend to introduce." I thought perhaps there may be reports on there, CVs on that thumb drive, something for these people. We didn't get the thumb drive until the next week. The only thing on the thumb drive were the CVs for those two people specifically. I attempted to call those two people on October 7th. Neil Broom refused to talk to me at all. I just had three simple questions for them – When did you get contacted by the Defense? What evidence did you review? And what are you gonna testify about?

– in an attempt to gain information about what they're gonna testify about. Neil Broom wouldn't answer any of my questions, said he had a responsibility to the client to keep all that privileged. Stacy Eldridge did answer some of my questions, but when I asked her about what she was gonna testify to, she said, "I can't tell you. That is yet to be determined." There are some other witnesses, as well, like a former prosecutor, Robert Ives. There's several other, James Chadwell, Richard Everett. The only explanation we got for those, for Rob Ives, he publicly commented on the aspects of the investigation. And then for these other looks like prior defendants in Carroll County, the explanation was motorcycle gang member in Delphi morning of February 13th for a pre-trial hearing. Again, Judge, my problem is trial by surprise. We're going into the trial – and I appreciate I can depose all these people and I appreciate that, but we don't have time to do that at this point. And so specifically with the experts that are gonna testify, the State would request some kind of report, summary, allow me to talk to them on the phone briefly with defense counsel present, something to give me some information about what they're gonna testify to. I'm shocked that Neil Broom or Stacy Eldridge, if they're gonna testify about phone extractions done on L.G.'s phone or digital data, they don't have some kind of report to go with that. And the State's concern is we're gonna have an expert up there testifying and I have no idea what the extent of their testimony's gonna be; and at least one of these experts, as of October 7th, didn't know the extent either. And so I guess I just want to bring it to the Court's attention that, without those things, the State's gonna object to them being called as witnesses as late disclosures, and then no disclosure at all in some cases, and so I'm not really sure how to address it, Judge, but that's a concern of the State at this point.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge. A couple things, first of all, looking back at the Court's order regarding the exhibits, the circumstances with exhibits, the order itself actually only required the parties to exchange exhibit lists as of – I'm trying to get my head straight in terms of days, I think October 1st, I need to look at the order. We actually tendered a full-blown exhibit, updated witness list and, as Mr. McLeland mentioned, a hard drive to them with as many of the exhibits that we could get on there that – and some of them were duplicated, they were things that the State already had, but there were things that we put in there as a courtesy, even though we weren't required to. We provided all that to the State. As it relates to these names that they're throwing around that Mr. McLeland's talking about, Broom and Eldridge, those are people that we have sought out to assist us with information regarding the digital data, as I mentioned to him in the email, because of new Cellebrite phone dumps that the State gave to us in looks like – I think it was August 22nd/August 23rd of 2024. So I even got a discovery dump yesterday I think I did from Mr. Mullin, in fact, I mean just to give you some idea of how on-going this is. So we got a discovery dump in August of 2024, late August, that contained information that needed to be reviewed by somebody, so we are – we were seeking these people's assistance in that regard. And so I understand that they're like, "Hey, it would be kind of nice to know what's going on with these people." Well, it would be kind of nice to have this evidence before August 23rd of 2024, so it kind of cuts both ways. I don't think there's any bad faith here. We're talking with our people, they're talking with their people. We've done a ton of discovery in terms of depositions, they've ordered up very few, that's their choice, that's their approach to preparing

their case; but at the end of the day, we offered the names of those people up on October 1st, they have not asked to depose those individuals. I'm not really opposed, as just a matter of professional decorum, to – or courtesy, I should say, to allowing some contact between the State and these people in the next week or so, if we can figure that out or, you know, some kind of communication so that they have some idea of what these people are going to testify to. But there are no written summaries, we haven't asked for those, they don't exist, we're not holding something that we're not giving to them. It's just a matter of this discovery coming in and hitting us almost weekly and us just trying to react to that. And so that's the landscape on which all this is occurring. I think that we're willing to have some constructive conversations about how they can get access to that. Frankly, I have – I mean, other than the emails – I'm not taking shots at Mr. McLeland, we had a nice conversation in his office a week or so ago about many things, but he hasn't – other than that email, there hasn't really been any discussion about this in any detail up until today. Can I say one other thing that's just slightly off point here, just because it's a procedural matter?

THE COURT: Well, can we resolve this first?

MR. ROZZI: Yeah, sure.

THE COURT: I mean, are these witnesses gonna testify, Neil Broom and Stacy Eldridge?

MR. ROZZI: Ms. Eldridge will be testifying and –

THE COURT: So –

MR. ROZZI: -- possibly Mr. Broom on rebuttal maybe.

MS. AUGER: Maybe.

MR. BALDWIN: Maybe.

THE COURT: They need – you need to provide, then, to the State the substance of their testimony.

MR. ROZZI: But there are no reports. That's what the rule requires us to offer up.

THE COURT: The substance of what you expect them to testify to.

MS. DIENER: Judge, I would need that also with Stuart Grassian. We've asked for a report, they said they had none, we got no other response.

THE COURT: Okay. So there are three now, Neil Broom, Stacy Eldridge, and Stuart Grassian, that are going to be called by the Defendant and you have not provided to the State the substance of their testimony?

MR. ROZZI: No, because there are no reports. Mr. Grassian never generated a report. Mr. Broom never generated a report. Ms. Eldridge never generated a report. They've been aware of Mr. Grassian since the first witness list was filed back in April of 2024, or even March maybe, going back in time, and they've not asked – they've taken two depositions it this case that I'm aware of, that I've been a part of, since we've started. And so those people have been – the State's – they've been on the State's desk, their names have been on their desks for months.

THE COURT: So you have no intention then of providing any information to the State of Indiana about these three witnesses and the substance of their testimony?

MR. ROZZI: I mean, as a courtesy, I don't have a problem with, I don't know, maybe I guess in some form of an email or something, just identifying, "Hey, this is what we generally expect this person to testify about," but I don't think we have any obligation to provide any details in terms of their

testimony, that's what the discovery process is for. And this isn't discovery, this is walking into a courtroom in a pre-trial hearing.

MR. MCLELAND: Judge, I'm not asking for specific details on what they're gonna ask the witnesses. I don't believe in trial by surprise, that's my problem, Judge; and I have no idea what at least Neil Broom – in terms of Neil Broom and Stacy Eldridge, I know that knowledge of data of contained on phone extractions of L.G.'s phone, that's the explanation I got for Neil Broom. The explanation I got for Stacy Eldridge is knowledge of data contained on phone extractions from August of 2024, which is Christopher Cecil's phone extraction. That's the only information I have and Neil won't talk – Mr. Broom won't talk to me, and Ms. Eldridge says, "I don't know what the scope of my testimony's gonna be." I don't need specific questions they're gonna ask them, I just need the topics that they're gonna cover and what they're gonna talk about. I'm really surprised there's no report if they're gonna talk about this digital data; typically, there's reports with those kinds of things. So I just want some explanation of what – the scope of their testimony so that I can prepare for cross examination. The other witnesses, the State may object to relevance on those, Robert Ives, the former prosecutor, these other motorcycle gang members listed, I guess I'm just unclear about what those are gonna test – people are gonna testify to. And I appreciate we can do depositions, the problem is we don't have time, not now. And so at least for those witnesses that were added on October 1st, that's the State's issue, Judge, at least from my perspective. Ms. Diener also testified about Mr. Grassian or – Grassian. We've never really had any kind of explanation of what he's gonna testify to.

THE COURT: So do – are you going to, Mr. Rozzi, provide your

witnesses with your authority to communicate to the State of Indiana?

MR. ROZZI: Yeah, I don't have a problem –

THE COURT: Okay.

MR. ROZZI: I have no problem with him talking to these people.

THE COURT: Okay. Then advise those individuals to expect at least a phone call or a written communication from the State –

MR. ROZZI: Yeah, sure.

THE COURT: -- as to the content of their testimony.

MR. MCLELAND: Thank you, Judge. Nothing else from the State's perspective that I can think of off the top of my head, Judge.

THE COURT: Okay. Anything from the Defendant?

MR. ROZZI: Judge, I had one other procedural matter, I – just to make sure we weren't overlooking all the pleadings. We had kind of talked about – I think off the record yesterday about the DOC transports.

THE COURT: Yeah.

MR. ROZZI: Do you want to talk about that off the record or –

THE COURT: Yeah, we can.

MR. ROZZI: And try to figure out how to deal with the logistics of all that? That's really the issue.

THE COURT: Yeah. I mean, 'cause it – I mean, they need 24 hours notice, minimum 24-hour notice, and I need to get some kind of a timeline I guess from you as to when you expect they would be called to testify.

MR. ROZZI: Yeah. I agree it's kind of difficult, 'cause we also didn't know who – based on some of the rulings today or that you're gonna issue tomorrow, how that's gonna impact the witnesses. Maybe, if we're okay, I – we

can have a little pow-wow off the record and try to –

THE COURT: Okay.

MR. ROZZI: -- get –

THE COURT: That's fine.

MR. ROZZI: Try to figure that out.

MR. MCLELAND: Thank you, Judge.

MR. ROZZI: Okay. Thank you.

MS. DIENER: Thank you.

MS. AUGER: Your Honor, one more quick issue. No?

THE COURT: Go ahead.

MS. AUGER: The order incorporating – allowing the Defense to incorporate the previously provided materials on the motion in limine included issues – subject matter concerning Odinism and another topic, which is currently escaping me. It did not include the information regarding ritualistic killings or the balance of the Court's order in limine, and so our request is can we go ahead and incorporate those or do we need to bring Ms. Perlmutter back to –

THE COURT: Oh, no.

MS. AUGER: -- testify about ritualistic killings?

MR. BALDWIN: That was my fault, Judge. I didn't – I don't think I –

THE COURT: No.

MR. BALDWIN: If you just signed my order, I don't think I included those in there. I apologize.

MR. MCLELAND: No objection from the State.

THE COURT: I granted the motion to incorporate all of the evidence –

MS. AUGER: Okay.

THE COURT: -- so that there would not need to have a separate offer to prove covering hours or days of testimony. So whatever you presented at the hearings July 31st to August 1st that covered the third-party suspects and the ritualistic allegations and the allegations about Odin and Norse paganism, all of that is included in the offer to prove.

MS. AUGER: Thank you.

THE COURT: So that you would not have to re-call all of those people.

MS. AUGER: Thank you.

THE COURT: Okay.

MR. MCLELAND: Thank you, Judge.

THE COURT: Thank you. Jodie, you can go off the record.

(Off record at 11:59 a.m.)

(On record October 18, 2024, at 9:10 a.m.)

THE COURT: All right. We are on the record, ladies and gentlemen. Good morning. Nice to see everyone here this morning. A couple of housekeeping matters. Thank you to the State and the Defense for providing their first joint stipulation regarding evidentiary matters. I think that's gonna be nice and streamlining then for the jury, so that we don't have to put in a bunch of witnesses that are just for evidentiary foundation purposes, so I will sign this, accepting the stipulation and make that part of the record. When we

have bench conferences, because we have six attorneys, it's going to be difficult to have bench conferences. I think I mentioned yesterday to counsel that there's a table been set up over here with a microphone and, if you need to approach the bench, we can conduct our bench conferences over there. The technical assistance gentleman for Carroll County has provided the Court with the instructions on how to start and stop the sidebar, yeah, so it will – it'll shoot white noise out through there so that it is on the record, but it is not being displayed out to the audience. I've provided to counsel now the preliminary instructions and have incorporated the specific instruction requested by the Defense on reasonable doubt. So we will start with the preliminary instructions, counsel will make their opening statements, and then the State will begin to present its case in chief. And the jurors are here, they are in the jury room. And before we get started, I just want to advise counsel, I believe you – a couple of you were in the outer office there when one of the sheriff's deputies indicates that members of the media had violated the Court's decorum order. Apparently, a gentleman from NBC, another – by the name of Eric Arnold; a gentleman by the name of Ryan Delaney, who I don't know if he's affiliated with the media or if he is a private citizen; a gentleman by the name of Alex Martin; and a Mike Conroy with the Associated Press were downstairs filming the jurors as they were coming into the building, coming into the area where they were going to be let off. One of the – several of the members of the Carroll County Sheriff's Department observed this conduct and confiscated NBC's camera, confiscated – and it's a video camera, one of those handheld on your shoulder cameras, also confiscated Mr. Delany's Nikon camera, Mr. Martin's camera, and the Associated Press had two cameras, so I have confiscated five still cameras and one video

recording camera. Randy, the tech guy, has removed the batteries and SIM cards, and the Court will retain the battery, the SIM cards, and the equipment. And I will be excluding Eric Arnold from NBC, Ryan Delaney, Alex Martin, and Mike Conroy from the Associated Press from further proceedings in this matter. It's a direct violation of the decorum order. As you know, I invited counsel and the media to meet with the Court yesterday. There were several members from the media here yesterday, I think there was at least two rows or three rows of media that came in. Each member that was present that had not received the courthouse management and decorum order dated September 30th I think, I'm not sure – October 16th, excuse me – was provided with a copy of the Court's decorum order. They all understood and indicated that they understood. And I know that counsel did not attend that meeting with the media because you had other things that you needed to attend to, but I wanted you to be invited, if you wished to. The court order clearly states, "During the trial, the media is directed that no photograph or record of the jurors is allowed, including the juror entrance/exit from the courthouse. If the jurors are sequestered, this prohibition shall also include travel, dining, and lodging locations for the jury, as well as parking and transportation vehicles when the jurors are present. Any violation shall result in the item being confiscated and erased, and violators and their affiliated organizations are subject to being excluded from the courtroom for the remainder of the trial." Direct violation. I thought I was perfectly clear with the media, both in written form and in the meeting that we had yesterday, but clearly, there are media that feel that they do not have to honor this Court's order, so they will be excluded and their equipment has been confiscated and will not be returned, and they will not be permitted in the building for the

remainder of the trial. Any issues with the Court's statement, Mr. McLeland?

MR. MCLELAND: No, Your Honor, not from the State's perspective.

THE COURT: Mr. Rozzi?

MR. ROZZI: No, ma'am.

THE COURT: Okay. I think it's important that Mr. Allen get a fair trial, that he get a trial free from the nonsense of the media that continues this morning, which is why we're late getting started, and I apologize that we're late getting started, but I felt it was very important that I address it with the officers with the Sheriff's Department, and they will be making a report and I'll provide that report to counsel when I receive it. So with all of that being said, is there anything that we need to do outside the presence of the jury before they are brought in for prelims and openings? Mr. McLeland?

MR. MCLELAND: No, Judge. The State had an opportunity to review the preliminary instructions, the State is satisfied with what the Court has provided.

THE COURT: All right. Thank you. Mr. Rozzi.

MR. ROZZI: Same for the Defense.

THE COURT: And I would just remind counsel that opening statement is not argument, it's a preview of what you expect the evidence will be. I did, last night, have an opportunity to review, and Jodie has provided you copies of the – and I apologize, these are handwritten orders. I – we're busy at night, just like you guys are busy at night, and we had some printing issues, so having taken the composite sketch motion in limine under advisement, I've granted that. I'm prohibiting the Defendant from using the composite sketches in the trial. I'd previously granted the motion for separation of witnesses and

then authorized the State to have its two. The motion in limine – and I ruled on those on the bench, so this isn't news to you, except for the composite sketches, which I took under advisement. So the rest of the motions that we discussed and I ruled on on the record have been memorialized in a handwritten order. And again, I apologize that they're handwritten, but I can't do anything different than that, so that's what we've got. Okay.

MR. ROZZI: May I?

THE COURT: Yes, sir.

MR. ROZZI: On the – on that issue, there's still the remaining issue of Mr. Tobin's –

THE COURT: Yes, yes.

MR. ROZZI: I'm just making sure that I didn't get that document.

THE COURT: No, no, no. That has not fallen off the radar, but the – you provided me with I think it was Dr. Warren's deposition and several CVs that I need to review and read, and I apologize that I had – did not get to that late last night. By two o'clock this morning, I figured it was more important that I rest, rather than finish that process, so I'll have that for you tomorrow.

MR. ROZZI: Very good. Thank you.

THE COURT: I hope that doesn't interfere with opening statements. I assumed that it wouldn't, but – okay, and Mr. Baldwin is shaking his head no. You are doing opening for the Defense?

MR. BALDWIN: I am, Judge.

THE COURT: And who is for the State?

MR. MCLELAND: Judge, I am.

THE COURT: Mr. McLeland.

MR. MCLELAND: Yes, Judge.

THE COURT: Okay. Let's bring our jury in, gentlemen. And just a reminder, folks, if you leave the room while we're in – while we are working, while business is being conducted, the door is being monitored by security and they will not let you back into the room until such time as we have a break in a witness. Please don't talk out in the audience, it's distracting. You may think you're being quiet, but when there's 30 of you being quiet, it is kind of noisy. So it's important that the attorneys not get distracted by your noise.

MR. MCLELAND: Judge, in that effort, we do have a few witnesses the parties have agreed that can stay in during opening statements –

THE COURT: Yes.

MR. MCLELAND: -- and then they will exit after opening statements –

THE COURT: Okay. That's fine.

MR. MCLELAND: -- 'cause they're part of the separation of witnesses.

THE COURT: Thank you.

MR. MCLELAND: So you will see a few people exit after opening statements, Judge.

THE COURT: Thank you. And obviously, the prohibition doesn't apply to the attorneys. And I know you all have several staff members and attending folks that are helping you with various odd and sundry things, and clearly, that does not apply to your staff and your assistants. And I appreciate that the Defense has indicated that they'll try to shield the laptop that one of your assistants is using to make sure that it's not displaying inappropriate

information, so thank you, sir.

THE BAILIFF: All rise.

(Jury in at 9:21 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, Jason, Jeremy. Well, good morning, ladies and gentlemen. It's nice to see you this morning. I hope your travel down and your stay last night was pleasant enough, considering what it is that we are all here assembled to do. You have in your possession a folder. Inside that folder is several pads of paper and pens for your purposes in taking notes and for asking questions. At the conclusion of the day, just leave those materials there on your chairs. Jodie will collect those and lock them up with her things. She doesn't look at anything, she just will lock those up and make sure that you have what you need for the balance of the trial. You may take your folders with you when we take our breaks and over the noon hour, but you will need to leave them here over our evening recess. I apologize for the little bit of delay, I'd hoped to get started right at nine o'clock. There were a couple of housekeeping matters that I needed to attend to. These attorneys have been here waiting and ready to go, so I apologize for the brief delay. I try to keep jurors advised of what it is that we're going to be doing, so the next step in the proceedings is the Court will read its preliminary instructions. I have provided to you copies of those instructions, you may follow along as I read those, if you wish. Once I'm done, the attorneys will make their opening statements. The State will present its statement first and then the Defendant will present his opening statement, after which the State will begin to present its case in chief. Again, I've provided copies of these to you and you may follow along if you wish. This is a criminal case brought by the

State of Indiana against Richard Allen. The case was commenced when informations were filed charging the Defendant with count 1, felony murder, a felony; count 2, felony murder, a felony; count 3, murder, a felony; and count 4, murder, a felony. Those informations, omitting formal parts, read as follows: Count one: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did kill another human being, to-wit: A.W., while committing or attempting to commit kidnapping. Count 2: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did kill another human being, to-wit: L.G., while committing or attempting to commit kidnapping. Count 3: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did knowingly or intentionally kill another human being, to-wit: A.W. Count 4: On February 13th, 2017, in Carroll County, Indiana, Richard Allen did knowingly or intentionally kill another human being, to-wit: L.G. The crime of murder is defined by law as follows: A person who kills another human being while committing or attempting to commit kidnapping commits felony murder, a felony. Before you may convict the Defendant, the State must prove each of the following beyond a reasonable doubt: One, the Defendant, Richard M. Allen; two, killed; three, A.W.; four, while committing or attempting to commit kidnapping, which is defined as a person who knowingly or intentionally removes another person by force or threat of force from one place to another. If the State fails to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty. If the State does prove each of these elements beyond a reasonable doubt, you may find the Defendant guilty of count 1, felony murder, a felony. The crime of murder is defined by law as follows: A person who kills another human being while committing or attempting to commit kidnapping commits felony murder, a

felony. Before you may convict the Defendant, the State must prove each of the following beyond a reasonable doubt: One, the Defendant, Richard Allen; two, killed; three, L.G.; four, while committing or attempting to commit kidnapping, which is defined as a person who knowingly or intentionally removes another person by force or threat of force from one place to another. If the State fails to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty. If the State does prove each of these elements beyond a reasonable doubt, you may find the Defendant guilty of count 2, felony murder, a felony. The crime of murder is defined by law as follows: A person who knowingly or intentionally kills another human being commits murder, a felony. Before you may convict the Defendant, the State must prove each of the following beyond a reasonable doubt: One, the Defendant, Richard Allen; two, knowingly or intentionally; three, killed; four, A.W. If the State fails to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty. If the State does prove each of these elements beyond a reasonable doubt, you may find the Defendant guilty of count 3, murder, a felony. Again, the crime of murder is defined by law as follows: A person who knowingly or intentionally kills another human being commits murder, a felony. Before you may convict the Defendant, the State must prove each of the following beyond a reasonable doubt: One, the Defendant, Richard Allen; two, knowingly or intentionally; three, killed; four, L.G. If the State fails to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty. If the State does prove each of these elements beyond a reasonable doubt, you may find the Defendant guilty of count 4, murder, a felony. The Defendant has entered pleas of not guilty and the burden rests upon the State of Indiana to prove to each of

you beyond a reasonable doubt every essential element of the crimes charged. The charges which have been filed are the formal method of bringing the Defendant to trial. The fact that charges have been filed, the Defendant arrested and brought to trial is not to be considered by you as any evidence of guilt. Under the law of this state, a person charged with a crime is presumed to be innocent. To overcome the presumption of innocence, the State must prove the Defendant guilty of each essential element of the crimes charged beyond a reasonable doubt. If the evidence lends itself to two reasonable interpretations, you must choose the interpretation consistent with the Defendant's innocence. If there is only one reasonable interpretation, you must accept that interpretation and consider the evidence with all the other evidence in the case in making your decision. The Defendant is not required to present any evidence to prove his innocence or to prove or explain anything. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told it is only necessary to prove that fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that, it must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced the Defendant's guilty of the crimes charged, you may find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you should give him the benefit of the doubt and find him not guilty. The burden is upon the State to prove beyond a reasonable doubt that the Defendant

is guilty of the crimes charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the Defendant's guilt, but it does not mean that the Defendant's guilt must be proved beyond all possible doubt. A reasonable doubt is a fair, actual, and logical doubt based upon reason and common sense. A reasonable doubt may arise from either the evidence or from a lack of evidence. Reasonable doubt exists when you are not firmly convinced of the Defendant's guilt after you have weighed and considered all of the evidence. A defendant must not be convicted on spec – on suspicion or speculation. It is not enough for the State to show that the Defendant is probably guilty. The State must prove each element of the crimes by evidence that firmly convinced each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance. You are the exclusive judges of the evidence, the credibility of the witnesses, and of the weight to be given the testimony of each of them. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe; the manner and conduct of the witness while testifying; any interest, bias, or prejudice the witness may have; any relationship with other witnesses or interested parties; and the reasonableness of the testimony of the witness considered in light of all of the evidence in the case. You should attempt to fit the evidence to the presumption that the Defendant is innocent and the theory that every witness is telling the truth. You should not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony, you must determine which of the witnesses you will believe and which of them you will disbelieve. In weighing the testimony to determine what or whom you will believe, you should use your

own knowledge, experience, and common sense gained from day-to-day living. The number of witnesses who testify to a particular fact or the quantity of evidence on a particular point need not control your determination of the truth. You should give the greatest weight to that evidence which convinces you most strongly of its truthfulness. During the progress of the trial, certain questions may be asked and certain exhibits may be offered which the Court rules are not admissible into evidence. You mustn't concern yourselves for the reasons for those rulings, since the production of evidence is strictly controlled by rules of law. You mustn't consider an exhibit or testimony which the Court orders stricken from the record; in fact, such matter is to be treated as though you never heard it. Nothing that I say during trial is intended as any suggestion of what facts or verdicts you should find. Each of you, as jurors, must determine the facts and the verdicts. The evidence must be judged and considered from your memories of the testimony of the witnesses and such exhibits as may be admitted for your examination. You may take notes during the trial, if you wish. Do not become so involved in notetaking that you fail to carefully listen to the evidence or to observe the witnesses as they testify. Transcripts of witness testimony will not be available to you during your deliberations, so please, pay careful attention during the testimony. Notes are not evidence in the case and mustn't take precedence over your independent recollection of the evidence. They are only an aid to recollection and are not entitled to any greater weight than your recollection or impression as to the actual evidence. Your notes should not be disclosed to anyone other than a fellow juror during deliberations. Do not take your notes outside of the court or the jury room. The Court has furnished you with paper and pens. You are allowed to submit questions to

witnesses to clarify their testimony during trial under certain conditions. If you feel the answer to your question would be helpful in understanding the case, please, raise your hand after the attorneys have completed their examinations, but before the witness is excused. You must write your question down and hand it to the bailiff. I will then privately confer with the attorneys about your question and I will make a ruling on whether your question may be asked under our law. If the question is of the type that is allowed, I will address the question to the witness. Please do not directly speak to the Court, the lawyers, or the witnesses, but carefully follow this procedure if you wish to have a specific question addressed to a witness. Your verdicts must represent the considered judgment of each juror. In order to return a verdict of guilty or not guilty, you must all agree. After you return your verdicts, you are under no obligation to discuss them or the reasons for them with anyone. The trial of the case will proceed as follows. First, the attorneys will have an opportunity to make opening statements. These statements are not evidence and should be considered only as a preview of what the attorneys expect the evidence will be. Following the opening statements, witnesses will be called testify. They will be placed under oath and questioned by the attorneys. Documents and other tangible exhibits may also be received as evidence. If an exhibit is given to you to examine, you should examine it carefully, individually, and without comment. When the evidence is completed, the attorneys will make final statements. These final statements are not evidence, but are given to assist you in evaluating the evidence. The attorneys are permitted to argue, to characterize the evidence, and to attempt to persuade you to a particular verdict. You may accept or reject these arguments as you see fit. Finally, just before you retire to consider your

verdicts, I will give you further instructions on the law which applies to this case. During the trial, there will be periods of time during which you will be allowed to separate, such as a recess for rest and overnight. When you're outside the jury room, you mustn't discuss the case among yourselves or with anyone else; however, you may discuss the evidence with your fellow jurors during recesses from trial when all of you are present, as long as you reserve judgment about the outcome of the case until deliberations begin. If anyone makes any attempt to talk to you concerning this case, you should report that fact to the Court immediately. Until your jury service is complete, while you are outside of the courtroom or the jury room, you may not use computers, laptops, cell phones, other electronic devices, or any other method to conduct research on your own or as a group regarding the case; to gather information about the issues in the case; to investigate the case, conduct experiments, or attempt to gain any specialized knowledge about the case; to receive assistance in deciding the case from any outside source; to read, watch, or listen to anything about the case from any source; to listen to discussions among or receive information from other people about the case; or talk to the parties, the lawyers, any of the witnesses, or members of the media, or anyone else about this case, including posting information, text messaging, email, Internet chat rooms, blogs, and social websites. During the trial, you mustn't consume any alcohol or drugs that would affect your ability to hear the evidence fairly and impartially. You should keep an open mind and not reach a judgment about the outcome in this case until you've heard all of the evidence, the arguments of counsel, and the final instructions on the law and you begin your deliberations. First then for opening statements, Mr. McLeland.

MR. MCLELAND: Thank you, Your Honor. Judge, I apologize.

THE COURT: That's all right.

MR. MCLELAND: I'm having technical difficulties ready at the start off the trial. Not a good way to start, I understand.

THE COURT: Not a problem. We have all struggled with technology.

MR. MCLELAND: I appreciate that, Judge. Thank you.

THE COURT: Do you need Randy to come in here?

MR. MCLELAND: I think we need just a moment, your Honor –

THE COURT: Okay.

MR. MCLELAND: -- the Court may not, but –

THE COURT: Okay.

MR. MCLELAND: Ladies and gentlemen, good morning. We're having a little bit of technical difficulties. I was hoping to show you a video, but it's not gonna work out. A few short days ago, I told you this case was about a Bridge Guy – or about Bridge Guy, a bullet, and the brutal murder of two young girls. Now it is time for you to hear the rest of the story, how Richard Allen murdered A.W. and L.G. I want to take you back the February 13th of 2017, a day where everything changed for A.W. and L.G. As we told you before, it was unseasonably warm that day in Carroll County, it was a nice summer day in the middle of winter, hint of spring which was just around the corner. On top of that, A.W. and L.G. had a day off of school, so they decided to go out to the trails, specifically out to the Monon High Bridge, to be outside, enjoy nature, enjoy the weather, enjoy their day off of school. Now, I told you before the trails are a trail system in Delphi. There are trails that wind through the city, they go through various wooded areas and go along and across streams, rivers, and creeks. The

Monon High Bridge is an abandoned train trestle it's 60 feet above the Deer Creek. So the girls headed out to the trails. They asked Kelsi German to go with them. She wasn't able to; however, she was able to give them a ride. On the way to the trails, L.G. snapped pictures of her and A.W. in the backseat of Kelsi's car, laughing, joking. Kelsi dropped the two girls off at the entrance of the trails, what is known as the Mears entrance. The entrance goes along the property of the Mears family, owned by the Mears family, so everyone in this community refers to it as the Mears entrance. They entered into the trails through this entrance and they headed towards the Monon High Bridge. I want to tell you a little bit about A.W. and L.G. First of all, from hearing me in court and hearing me speak, you know they commonly go by A.W. and L.G., what they're commonly referred to. They were best friends, they were always together. They were really more like sisters than friends. To put it into perspective, out of the two of them, only L.G. had a phone, but L.G. had A.W.'s fingerprint put in her phone so that A.W. could use it anytime she wanted. They both were also students at Delphi Middle School, so they hung out together, they went to school together, they did everything together. They were best friends. As they went down the trail, L.G. was on her phone, like most teenagers. She was talking to friends, texting family, she was on Snapchat, she was able to look at pictures from other friends, posting her own pictures. And I know everyone knows what Snapchat is, but it's an app you have on your phone where you take a picture and you can post it online. The picture’s up for a period of time and then it disappears. It's a pretty popular app for kids in this community. She did that as A.W. and her walk down the trail down towards the Monon High Bridge. I want to tell you a little bit about the bridge. Now, I had hoped the video was gonna show the bridge, and maybe

I'll be able to show you a video of it later, but it's a very high bridge, it's a very old bridge, and it's a very long bridge. Once you're on the bridge, there's nowhere to go. There's no rails. There's only a few platforms in certain places. If you had to escape and you were on the bridge, you'd have nowhere to go but to jump off. The railroad ties that hold together the bridge are falling apart, some are broken, some are loose, heck, even some of them are missing all together. It's scary to cross and it's flat-out dangerous, but again, as I told you a few days ago, middle school and high school kids in our community love to cross the bridge, mostly just to say they did it. I even did it when I was in high school. As they crossed the bridge, L.G. continues to use her phone, continues to take pictures and post them on Snapchat, takes a picture of A.W., posts it on Snapchat. As they crossed the bridge, L.G. went first and A.W. followed. As L.G. got to the end of the bridge, she waited for A.W. L.G. continued to play on her phone. But as she got to the end, she looked back and she noticed a man was following A.W., and something inside L.G. told her that she needed to get her phone out and film the man following A.W., 2:13 p.m. is when she did that. The man follows A.W. off the bridge to where L.G. is standing. He then pulls out a gun and orders both the girls down the hill. Those chilling words, “Girls, down the hill.” They complied against their will, and as this happens, the video on A.W.’s phone cuts off - or L.G.’s phone cuts off. Imagine, 13 and 14 years old, you’re with your best friend, the weather's beautiful, you're off of school, you decide to have some fun, go to the trails, and cross the bridge, a local challenge in our community. While you're doing that, you're laughing, you're joking, you're posting pictures on Snapchat, but as you end the bridge, you notice a man following you. You get that chill, that feeling, that feeling that you have when something isn't right. You

pull out your phone and you took the video the man and, as you do, your friend runs to your aid. The man approaches, pulls a gun, and orders you and your friend down the hill. Imagine the fear you would have, a gun pointed at you, being ordered down the hill against your will. Out of fear, the girls complied, they complied with his orders, not knowing what he wanted or what he was gonna do to them, completely powerless. He had the power and the fear and forced them down the hill. Later that day, Derrick German arrives at the trail to pick up the girls, but the girls are nowhere to be found. He calls other family members to assist, but no one can locate the girls. The police are called and a search is started. The search ensues for the girls until 2 a.m. on February 14th and then it picks up again later that morning at 6 a.m. As the search progressed through the day, the girls were ultimately found, both were dead, 13 and 14 years old. They were found just upstream from the Monon High Bridge near the Deer Creek. You're gonna see pictures of the scene, it was a gruesome scene. L.G. was completely naked, covered in blood, with her throat cut in several places. L.G.'s blood was all over the ground in several places and even on one of the trees. A.W., she had on her own undershirt, but she had on L.G.'s sweatshirt and L.G.'s jeans. A.W. had her own shoes on, but no socks. Her throat was also cut. The rest of the girl's clothes were found in the Deer Creek with the exception of two things, one of L.G.'s shoes and L.G.'s cell phone, they were found underneath the body of A.W. Also found at the scene was a lone bullet, an unspent bullet, inches away from the bodies of A.W. and L.G., specifically a Winchester 40-caliber bullet. The phone, along with the other items, were sent to be processed to see what evidence could be gathered, to see what they could find. On the phone were the last pictures taken by L.G. of her

and A.W., those pictures that L.G. took while on the ride in Kelsi's car. There's also the videos L.G. took, the video at the end of the Monon High Bridge that showed the man that was following A.W., that showed the man who kidnapped A.W. and L.G., the man we know as Bridge Guy. As the investigation progressed, witnesses started to come forward with information. You're gonna hear from three girls that were on the trail that day, Anna Spath, Railly Voorhies, and Breanna Wilber, and they were on the trail, as well, taking pictures of nature with friends, laughing, joking. They stopped and took a picture at a bench just east of the Freedom Bridge and, right after that, they ran into a man along the trail and later described that male as walking with a purpose, but not very friendly. Most importantly, they're all gonna testify that the man they saw on the trail that day is Bridge Guy. You're then gonna hear from Betsy Blair, she came forward. She was on the trail that day, as well. She uses the trail to exercise, she walks the loop on the trail for her exercise daily. She walked down to the Monon High Bridge and, when she got to the Monon High Bridge, she saw the male out on the first platform on the bridge. She'll testify the guy she saw is Bridge Guy from L.G.'s video. You're then gonna hear from Sarah Carbaugh, who said that she drove east on 300 North that day. She saw a man walking along the side of the road and that man was muddy and bloody, like he had just slaughtered a pig, and she'll tell you the man that she saw was Bridge Guy. Years passed and, through the years, investigators worked on the case, tried to find additional clues. Included in the people working on the case was a gal named Kathy Shank. As she was reviewing old reports, she came across a report by a DNR officer, Department of Natural Resources, named Dan Dulin; and in 2017, he spoke to Richard Allen and he made a report. And when he spoke to

Richard Allen in 2017, Richard Allen told him that he arrived at the trails at 1:30 and he was there until 3:30, and that while he was on the trail, he ran into three girls. Kathy immediately took this report to Tony Liggett, who was the detective at the time. You're gonna hear Tony Liggett testify that the tip stuck out to him immediately, because he knew that if they could find the man that ran into the three girls, they would be able to identify Bridge Guy, and so it immediately stuck out to him. Law enforcement immediately called Richard Allen, they interviewed him. Richard Allen admitted he was on the trail on February 13th of 2017, that he ran into the three girls on the trail. He also stated he was wearing a blue or black Carhartt coat, jeans - and jeans and fit the description of the man on the bridge. Also found out that he owned firearms. Investigators searched Richard Allen's house and they found a blue Carhartt jacket, several knives and box cutters, boots, and a .40-caliber gun with .40-caliber ammunition. The gun was sent to the lab and tested, and it was confirmed that the bullet at the scene was cycled through Richard Allen's gun, that it came from Richard Allen's gun, the bullet that was found between the two bodies of A.W. and L.G. Richard Allen was brought in for a second interview, this information was put in front of him. He had no explanation for how his bullet ended up between the bodies, "I don't know. I don't know." The story could have ended there. Richard Allen was arrested and, while he was incarcerated, he confirmed what investigators knew, that he was the one that killed A.W. and L.G. And it just wasn't one admission, it was several, some with details of the crime, how he did it, why he did it. And these aren't admissions he made while he was being interrogated or being tortured or even being asked questions by police. These are admissions that he told his wife, his mother, unprovoked, admissions that were freely and knowingly

made, admissions that had details that only the killer would know. You're gonna hear those details. For five years, he lived in this community, he worked in this community, he hid in plain sight. The State is confident, after you hear this evidence, that you will be firmly convinced that Richard Allen is the man on the bridge that kidnapped A.W. and L.G. and then intentionally murdered them, that Richard Allen is the man on the bridge and that he used his gun to gain power over the two girls and forced them down the hill, the words that he uttered to those girls; that he forced them down the hill and he was gonna have his way with him, but he was interrupted, and we're gonna talk to you and tell you about that interruption, and after which, he forced them to cross the creek and he killed them. The evidence will show the last face the girls saw before their throats were slit was Richard Allen's face. The State believes that you'll be firmly convinced that he is the one that killed A.W. and L.G. Thank you, Judge.

THE COURT: Mr. Baldwin.

MR. BALDWIN: Richard Allen is truly innocent, truly innocent; and when a man is truly innocent, there will be reasonable doubt from the evidence and from the lack of evidence. It may be hard to believe what you hear, but we ask you to wait, because in this case you're going to find out that the evidence and the lack of evidence shows that Richard Allen is actually innocent and that, therefore, there is reasonable doubt. We want the truth to come out in this courtroom for the families and for you all, most importantly. So I'm gonna preview that evidence you're going to be looking at over the next few weeks. It starts out you're going to find out that this case and the investigation was messed up from the beginning to the middle and as recently as the last couple of days. The beginning, you'll find out that evidence was lost, evidence was – is gone,

poof. Steve Mullen was in charge of that evidence, we're talking about the important evidence that happens right after they start an investigation. We're talking about evidence of interviews of key witnesses that are gone forever and Richard Allen and his defense team will never, ever get to see that evidence and neither will you. We're talking about evidence that they don't even know who they interviewed, because they didn't even bother to write down the names of people that were interviewed. We're talking about days and days and days of evidence right after the murders. And that wasn't all. Then, a month later, they lost more evidence. From April the 29th to June the 2nd, they lost interview after interview that we will never see, Richard Allen will never have the benefit of looking at and neither will you. You'll find out that the Defense didn't even learn about that stuff until very late. We had been asking for it. That's the beginning. In the middle, you're gonna find out that the State of Indiana kicked out the FBI, they were having some turf wars, you'll hear about that, kicked them out. That's gonna be a problem, you're gonna find out, because they not only kicked out the FBI, but their digital forensic people. You're gonna find out that their digital forensic people had been given L.G.'s phone, the extractions from that, and before the FBI had a chance to talk with the State Police about their findings, if they had any, they were kicked out, and that is going to be a major problem you'll find out here in a moment. And then, most recently, two days ago, you're gonna find out that law enforcement is scrambling a bit. Some of you – on the one panel, I didn't talk about it, but on the other I did – there is hair found in A.W.'s hand, a strand of hair was around her fingers with a root and DNA that can be extracted from that root, and DNA was extracted from that root. And the DNA analysis, her name is Bozinovski, Stacy Bozinovski, she will be testifying

that hair, it might be from a relative of L.G. We know that it's not L.G.'s hair, the DNA from – it's not L.G.'s hair, 'cause the DNA is not from L.G. We know that it's not A.W.'s DNA. It's a female hair. And all we need to know whether it's a family member or not, you will find, all that we need, Stacy will tell you, is to test the mom or the grandma or the sister of L.G.; and once we do that, we will know whether it's a family member or somebody else, and it could be either. And after I give my mini-opening, they scrambled; because in seven years, they never turned over the sister or the mother's DNA over to that lab to find out whose hair that might be. That's even now. I hope that they get that result back of the DNA, so the truth can come out in this courtroom. Truth, believe it or not, can come out in a phone. These phones, they don't lie. The data, the forensic data, on these phones doesn't lie. It doesn't cheat. It doesn't have emotion. You're gonna hear all this. The data is hard and the data is the data is the data, and when you find out what is on this – L.G.'s phone is what I'm talking about, the phone that was found under A.W. – their case is going to start to fall apart right in front of your very eyes. The man – there's a couple of guys from the State Police who are nice fellows, their names are Brian Bunner and Chris Cecil. You're gonna like them, I think. They are in charge of analyzing the phone dumps. You'll get the phone dumps and extractions, things like that. They are in charge and have been in charge of understanding the data, the hard data that doesn't lie off of L.G.'s phone. And what you're going to find out is, sadly, they were ill equipped to understand the data. We'll talk about that in a moment. Chris Cecil will tell you that the data from the phone dump is accurate and reliable; and we're happy about that, because this data will be incredibly important in your deliberations and as you follow the case evidence. Well, I think it's important that I tell you

what the State's theory is, they kind of previewed it, what I want you to do is – I'm gonna ask that they be held to their theory, because I think they're gonna have to change their theory after this case starts evolving in front of you; okay? Their theory is that Richard Allen – well, strike that, we'll start with L.G. and A.W., L.G. and A.W. A.W. and L.G. were on the ground in the woods at four o'clock, at the very latest four o'clock, they were deceased and on the ground at four o'clock on the 13th. That's a Monday, it's a Monday, the 13th. And at five o'clock, their bodies didn't move, 6 p.m. 7 p.m., 8 p.m., midnight, 1 a.m., 4 a.m., 6 a.m., bodies are still there according to – this is their theory, their theory – 6 a.m., noon, those bodies didn't move. They were there from the 13th at least four o'clock they will say, probably they're gonna say more like 3:30 p.m., all the way up until the time when the bodies were recovered. That's their theory. The phone, L.G.'s phone, they're going to say was under that body, was under A.W.'s body, at 3:30 p.m., 4 p.m. on Monday the 13th, 5 p.m., 6 p.m., 8 p.m., midnight, 2 in the morning, 4 in the morning, 6 in the morning, all the way up until the bodies were recovered around noon on the 14th, Tuesday the 14th. That's their - that's what their theory is, that phone never moves, that's their theory. Hard data. Richard Allen. What's their theory about Richard Allen? Their theory about Richard Allen is that he arrived at the trails and parked at the CPS lot. You're gonna hear a lot about the CPS lot, I gotta try to recreate what you're gonna find out. So as you're heading down 300 North, that's the road that takes you to the CPS lot, which is one place where cars park when they want to get on the trail, and Mears lot that you just heard about is a little bit farther down. So as you're driving down 300 North, this is the CPS lot. You can park there, then you can cut over to the Monon High – the Monon trail, it's about 100 yards or

something, and so you're a little bit back farther on the trail, or you can continue to drive and head into the Mears entrance here, and now you're about halfway down the trail, if you're following, and the trail kind of runs parallel to 300 North, and then you go down to about 50 yards and you'll be at the trail. And what the State's theory is, that Richard Allen drove this way, which is not a normal way that he would ever drive, and you will learn about that, it won't even make sense that he drove this way, but they're – that's what they need that to be the case, because you'll find out why. But he drove this way and then parked past the Mears entrance and parked the CPS entrance at 1:30. This is their theory. And at 1:30, two o'clock, 2:30, three o'clock – now, think about what's going on at this time in their theory – A.W. and L.G. are being abducted and murdered. Three o'clock, 3:30, Richard Allen's car, they say, is parked right here at the CPS lot. 3:45, four o'clock, their theory is that Richard Allen's car is parked and then, sometime around 4, after four o'clock, Richard Allen leaves. That's their theory. You'll also find out that their theory is that once Richard Allen – and this is important – once Richard Allen left, he didn't take their phone, he didn't take L.G.'s phone, hard data on it, and he never came back to the crime scene, and they're gonna say that that's all gonna be important. So that's what they say Richard Allen – it's what happened with Richard Allen, with the phone, and with A.W. And L.G. What is the Defense theory based upon the evidence? Well, let me go through the evidence and tell you what the Defense theory is based upon that evidence. Richard Allen was never on the trail at the same time with those girls. All this identification business, these girls and all of the list of who that is, you're gonna see even Railly Voorhies and those people, they're talking about some guy that's 5'11", doesn't really meet the description of 5'5" Richard Allen.

You'll make your own decisions what – on the value of their testimony. Richard Allen was gone by 1:30, had been on the bridge walking toward – on the trail toward the bridge at, you know, 12, 12:30, 1. He's gone by 1:30. Now, we know for a fact, and you will learn this from the evidence, that his car is gone by 2:15 p.m. Okay. Remember, think about the video is at 2:13. His car is gone out of the CPS lot; and if his car is gone, Richard is gone. How do we know that? What is the evidence going to be about that? Betsy Blair, you've heard her name a second ago, she is going to be an incredibly important witness for you all, Betsy Blair. You're gonna like her. Betsy Blair is going to testify that when she drove by the CPS lot at 2:15, and there's – we know that she drove by the CPS lot right around that time, because there's a camera that shows her between the Mears lot – I'm sorry, this is the CPS lot and the Mears lot, right in between there's a camera off the Hoosier Harvestore, that's gonna be another important thing that you guys are gonna be hearing about. The Hoosier Harvestore will help give us some tent poles of when times – when things happen. And so we know from Betsy Blair, you're going to find this out, when Betsy Blair traveled past that camera, that 30 seconds or so later, she's gonna be at the CPS lot. And when she testifies, you will hear her tell you what she – what vehicle she saw at the CPS lot at 2:15. Again, remember what their theory is of happening at 2:15, Richard Allen has abducted the girls already, so his car should be here. Well, was his car there? Here's what Betsy Blair will testify to: "My dad used to, when I was a kid, had a Comet" – she thought it was a Ford Comet, but it was a Mercury Comet – in the 60s, it's one of these old timey cars; you know? You see them out on the road sometimes and you're like, "Woah, look at that car." And it's very angular, it's got real crisp angles and lines, and she looked at it and she

had a blast from the past, “Wow, that’s - that looks just like my” – that's how she remembered it. Richard Allen's car that they say he was driving was a 2014 [sic] Ford Focus. Looks nothing like a Comet, you will see. That's the vehicle that Richard Allen was not driving, but somebody else, apparently, was. Richard Allen was gone by that time, that's why Betsy Blair did not see Richard Allen's car, she saw her Mercury, something that looked like a Mercury, and she will testify to that. And you will hear Steve Mullin, when he's asked about that, if he's consistent, he will say, “I don't know how to account for that.” There's reasonable doubt on this case. Well, what does the evidence show about what happened to the girls? What evidence is there that we can have to understand what happened with the girls? What will you be seeing in this case? Well, I think you're gonna hear from even today from Becky Patty, who's the grandma, and – that she and Derrick German, the dad, they all lived together. You're gonna find out kind of what they were doing early in the day on Saturday – I'm sorry, on Monday the 14th [sic]; okay? They might even tell you what they were doing on Saturday and Sunday, but they're definitely gonna tell you what they were doing on Monday the 13th. They had breakfast, they, you know – they talked a little bit, and then, at some point in time, Kelsi German, who’s now Kelsi Siebert, will drive A.W. and L.G. to the trail. And I think she's gonna testify today. And we know because of the Hoosier Harvest [sic] camera that Kelsi dropped them off at the Mears lot here, then drove past the camera, and that's about at 1:49 p.m. roughly, so they were – the girls were dropped off at about 1:47, which is gonna be about a few minutes before – or after Betsy Blair got there, you'll find that out. Betsy Blair and the girls, they were following – the girls were – basically, came in right after Betsy. And then Kelsi drove this way,

she's on camera, and we know then what time the girls got there. Then, you will find out that the girls walked down to the trail to the bridge. And the trail is straight and then, when you get – it's like – you know, it's like trails like in maybe in your own community, you'll notice that it's – there's asphalt and it's maybe, I don't know, this wide – (indicates) – and people are walking up down and exercising and whatnot. And you go down the trail and then you get to a point and there's the bridge, this bridge that Mr. McLeland was talking, big scary bridge, and it is, you'll see photos of it. And when you get to that bridge, you can make a choice – back then, it was easier than it is now, that you could get on that bridge and walk forward and just go straight to the other end. And those girls got on the bridge, probably around 2:05, that is what the evidence will show. And Mr. McLeland is correct, when they got on that bridge at 2:07 – and, by the way, they passed Betsy Blair, you're also gonna find that. Betsy Blair will say, as she was traveling this way, the girls were traveling this way, and they passed one another. And the girls got on the bridge and then went down here. Now, the bridge is long and it's high. Now – I'm on the bridge now, and this is what you're going to see, the bridge is incredibly – it's very long and there's – it's dangerous. As Mr. McLeland said, there's holes in it. It is the kind of thing that teenagers would do probably, and the girls walking on it. When they were about close to halfway across that bridge, one-third of the way, one half of the way, you will see that L.G. was ahead over here and she turned around and she took a photo of AW,. heading this way, heading to the south end of the bridge where the abduction happens, and you'll see A.W. there, and that happened at 2:07, so we kind of have an idea of where the girls were at 2:07. 2:13 is when the abduction happens. So we know that at 2:13, they're at the end of the bridge. So what

happened then? Well, that's caught on video, and this – you know, this video you will watch, and what you're gonna see on that video is it's not very panoramic, you're not gonna be able to see what everything is and where everything is and who is there. And you do hear this voice, "Girls, down the hill." Police have to admit that the guy on the video, you don't see his mouth moving. You're not gonna be able to be sure that he's the guy that's uttering those words, you're not gonna be able to know whether there are more than one person at the end of that bridge. So what will you see on the video? And, again, let me describe that end of the bridge for you that you will see in evidence. If I'm walking all the way to the end of the bridge like the girls, A.W. and LG. did, you have a choice, and you're gonna see this on the video, you can go left, go right. And it looks like, on the video, the girls head this way; okay? And if that's the bridge and you head this way, there's one way down, that's down a steep incline about 30 feet down the hill; okay? I don't think the evidence they're going to be able to show that those girls actually went down the hill or not. They may have, the evidence may show that, in your opinion, or it may show that they went straight. Or the evidence may show that they ended up going down this lesser of an incline on the other side of the bridge. And the bridge is about that wide. There's a lesser-graded slope that takes you down. Both though, the more-steep side and the less-steep side, take you down and funnel you down to an access road about 30 feet away, an access road, some might call it a driveway. What you're gonna hear is about a guy named Brad Webber. This is his property and this is Brad Weber's way to get to his property. He has two ways, there's that way and another way. To get to Brad Weber's house from this access road, the one way would be you get – let me go back over here to where the bridge is -on the right

side, where the girls were, and you go down that hill and then that access road goes under the bridge and it goes that way and it goes that way up to Brad Weber's house. So you can imagine that under the bridge. The State of Indiana will not be able to disprove that there was a vehicle down there or that there were other people down there. And we happen to believe that the evidence will suggest that those girls may have gotten into a vehicle at that point in time. There is not gonna be strong evidence about what happened at that point in time, I'm just telling you that. You can take from the information though, from the hard data on L.G.'s phone and some other information and data that you may see from other sources. Here's what we do know: A.W.'s – I'm sorry, L.G.'s phone was connecting to the tower and receiving text messages. "Where are you? What's going on?" Voicemails, telephone calls, connecting to the tower, all the way up until 5:44 p.m. It's gonna be an important timeframe for you all, 5:44 p.m. At 5:44 p.m., that phone no longer connected to the tower. From 5:44 p.m., no connection to the tower all the way until 4:33 a.m., when it reconnected to the tower, where the phone came back into an area where it connected the tower again. So for about 12 hours, closed to, ten hours, that phone did not connect to the tower. This is the phone, by the way, that was, by their theory, under A.W.'s body during that entire time. You will also find out that after four o'clock, when they say Richard Allen never came back to the scene, he left and never came back, their theory, he didn't take the phone with them – with him, that's what they're going to tell you, that after four o'clock, human hands handled that phone. Richard Allen was at home and he never came back, that's the evidence. You will also hear something about what are called exigent circumstance pings. You may have seen these on television, this is – on movies and things like that

where somebody is lost and they called AT&T in this case and said, "Hey, will you try to see if that phone's in the area?" And that happened here. And consistent with what we know from the phone itself, the last time that that phone connected, according to the exigent circumstance ping, the last time L.G.'s phone connected with the tower on the 13th, Monday the 13th, was what time? 5:44 p.m. That will be something that you will hear. Every 15 minutes, that phone was being pinged; and every 15 minutes, it was showing it's not connecting with the tower. The last time she did? 5:44. So at seven o'clock p.m., 7:15 p.m., 7:30 p.m. – these aren't exact times, they're at different times, but it was roughly in 15-minutes increments – that phone is not connecting with the tower. Around ten o'clock, you will find out that Steve Mullin, he's a law enforcement officer that will be a witness in this case, that he contacted – law enforcement contacted a guy named Mitch Blocher with the State Police. Mitch Blocher was the guy who knows about phone ping and how to analyze them. And Steve Mullin wrote up a report about what Mitch Blocher concluded. And he concluded either – the phone has not been connecting with the tower since about 5:44 p.m., so either the phone is no longer in working condition or it's out of the area. Well, we know and you're going to find out that the phone was in working order when it was found, it was in working order, so take that one down. It's left with the phone with out of the area. The phone that was supposed to be under A.W.'s body. So again, you will learn, then, midnight, 12:15 a.m., 1 a.m., the phone is not connecting to the tower. And then, at 4:33 a.m. – and we're not gonna be able to tell you, and I don't think the evidence will – nobody will ever know exactly when that phone – where it was when it reconnected or did connect with the tower. Of course, the Defense is saying that that phone was out and

that it came back in. What we will tell you is that, at some point in time after that phone came back into the area, somebody brought those girls back down to where they ultimately were found, and that was probably after 4:33 a.m. And you're gonna find out, at 4:33 a.m. – you know when you're in a building and you try to text somebody and it's – there's too many walls, and you walk outside and the text – you start getting texts and the texts start? At 4:33 a.m., 15 text messages and then other text messages matriculated, populated onto that phone once it connected with the tower, you're gonna find that out. And at some point in time – and I don't think the evidence will be able to – at some point time after that, after the thing with the phone, those girls – somebody killed those girls and somebody put that phone under the body, where it was then found around noon, a few hours later. We are, obviously, telling you that the evidence will be that those girls were not – where they were found on the 14th, they were not there on the 13th. And this will be a big help. But is there other evidence out there that would also suggest that the girls were not there on the 13th? Yes. So you're gonna find out that there was a search party assembled very quickly. It wasn't in L.G.'s nature – I think that Becky Patty will tell you this – it wasn't in L.G.'s nature to be late like she was, and so the family, very close family, they got together right away and said, "This isn't right. We gotta do something." So you're gonna find out that they started – sprung into action very quickly and they got a search party together, and it grew and it grew, Facebook and stuff like that, they got on Facebook and said, "Hey, these girls are missing." And you're gonna hear from Fire Chief – former Fire Chief Sterrett, and he's gonna tell you that – he's gonna tell you about his part of the search party. There was four or five, maybe 6, guys and here's where they searched for those girls on the 13th, when those

bodies, according to their theory, should be over there. If this is the – well, I think this end of the bridges where it happened. If this is where the bodies were – where the girls were abducted, I'm sorry, where the girls were abducted, and you can go down that hill, can go down that hill, Sterrett and his people that were with him, they searched on this side. The bodies, by the way, were over there. This is where they were. (Indicates) Sterrett and his people searched over here some – (indicates) – and then they came over here and they searched over here for four hours in this area. And the girls were across the creek. And one thing you guys are gonna find out is it's not very far from that end of the bridge where the girl's bodies were found across the creek, it's kind of like that way from the edge. So if they went down the hill, here's the bodies, they were found that way probably less than 300 yards. It's about 800 and some-odd feet, not very far. And that's at an angle. And what Sterrett will tell you is, "My people that I was with, and they were spread out and they were looking on this side." Well, they weren't on the side that the bodies were, but what did they see on the side where the bodies were? People with flashlights on that side. And not one person saw any bodies over there because the Defense theory is the bodies weren't there, they were somewhere else. And you're going to find out a little bit about that area, or not a lot – a little, probably a lot more than you want to maybe, that the area where the girls were found, it's flat, it's a natural place for these people to be walking, and the flashlights. Now Sterrett – I don't want to oversell, Sterrett's not gonna be able to tell you that they were – the flashlights were where the bodies were for sure, because he doesn't know, but he just saw flashlights over there. You're also going to find out that – and Mr. McLeland talked about it a moment ago – there's clothing in the creek; okay? And that's gonna be

important. One thing you're gonna find out is this – the people that were searching, they were preparing for the worst, that maybe those girls were in the creek, maybe they were floating or on top of the water, so the – some of the – many of the people were going along the creek bed, looking for the girls. Now, if the State's theory were true, that clothing of the girls that were found on the 14th should be in the creek where the people are searching with their flashlights, and nobody saw any clothing on the 13th in the creek. It was only until later that they saw the clothing in the creek. As an additional piece of evidence that you will have to show that the girls weren't there on the 13th is there anything else? Yes. Jerry Holeman will tell you that from where the girls were found to the bridge, you can hear voices. And around the time that their theory is that Richard Allen abducted these girls, there would be people walking on the bridge, four people, you'll hear from them, Daniel Pearson, Shelby Hicks, Cheyenne Mill, Shelby Duncan. Two of them went to this end of the bridge where it's really – again, the bodies are over that way – two of them were at this end of the bridge, and you're very close I think, that I would call it close to where the bodies were. Again, none of them heard anything, no screams, no voices, no wrestling, nothing right around the time when they say Richard Allen was abducting these girls. I mean, if anybody killed those girls, the evidence would show on the 13th just for that reason alone, there was no sound of anything. The evidence will be those girls were gone. There might be other evidence out there that you guys see individually, but this is the type of case where a jury sees and picks up on things that we don't see. That always happens, especially on longer cases. You guys might pick up, so keep your eyes open and your ears, because you're gonna see some things, as well, I think. Well, I know I've been going on long and I could go

on with this longer, but this is important stuff and I'm going to try to sit down as much as – as quickly as I can, but I do want to talk about what I think the State thinks and what they say under oath about bullets and we'll call it confessions and the timeline. I want to go through those very briefly. Confessions. You have this and the other evidence I've talked about and none of that stuff matters. So they can put up, and I expect that they're going to put up, person after person after person and video after video after video and audio after audio after audio of all of these confessions of an innocent man. But the hard evidence, it doesn't matter that the hard evidence shows otherwise. And what you're gonna find out – you're gonna see these videos, and we're gonna show you videos of Richard Allen in his cell and how this guy was taken out of his house, as I said in the mini-opening, away from his wife of 30-plus years, to a prison, where he's standing in this tiny, little cell, with a bed about that high, on the ground, about two feet from a toilet, watched 24 hours a day, told he's a baby killer. He went in there fragile to begin with. You're gonna see some video that is upsetting, and it should be upsetting. Even the video of him talking to his stepdad, saying, "Don't give me any money, don't hire me a lawyer." You're gonna find out even in November, within two weeks of him being at Westville, he said, "Maybe I'll just admit to all of it, so that you guys won't have to suffer." That was at the beginning. When these confessions happened, it was after close to six months, five to six months later, after he had endured what he had endured, confessing to shooting those girls in the back, when they weren't shot. The things I told you in that mini-opening. You take those confessions for what you think they are worth when you compare it to the other evidence, that's what we will ask you to do. What about these bullets? Well, before I – you're gonna

hear from some psychologists, Dr. Grassian and Dr. Wescott, they are our experts, and they're gonna tell you that the ingredients were there for false confessions, what Richard Allen endured. What about the bullet? The magic bullet, one witness called it. Here's what you're gonna find out: First of all, unless I see something I haven't seen before, and maybe even just missed if it existed, as a – just a kind of – maybe these photos exist, I haven't seen them, we'll see. There's the magic bullet that is in the ground, they say, right here. And you see some photos of that bullet as it's in the ground. And maybe they will produce these, but I haven't seen them, there's not a video of this important – this is one of their main pieces of evidence. The vid – there's no video or photographs of that bullet being taken out of the ground and photographed from that angle and that angle and that angle and that angle. Just a photo of the bullet in the ground and then, later on, a different – you know, a bullet – a different photograph of a bullet at the lab where it was tested. But in between, I didn't see anything else. So what else? Well, you're gonna find out about this bullet, that law enforcement commonly use .40-caliber bullet – guns that use .40-caliber bullets, even Sig Sauers are very common. And if there's gun people on the jury, they may have heard of the Sig Sauer, that's the gun they found at Richard's house, a very common gun. Law enforcement use Sig Sauers, .40-caliber bullets, so you would think, "Okay, let's test and find out whether it's – as police were walking around the area, did they drop a bullet? Let's see if that happened. Hey, I want every police officer that was at the crime scene walking around, I want to know what kind of gun they had and if they're missing any bullets." You think that would happen, but it did not happen. "I want every .40-caliber handgun that police had tested." You would think that would happen,

but it did not happen. You're also gonna find out that Brad Weber – remember that guy? He's the guy whose driveway goes all the way up to his house; right? He had a .40-caliber Sig Sauer in his vehicle, and that handgun was tested and it was not excluded as the weapon; okay? Here's what you're gonna find out about the test itself, and we have an expert named Dr. Warren and he's going to be very, very critical of the way that this weapon, this testing process was handled. Here's the way it was handled, this is what you will find out: The bullet that they got out of the ground had markings on it that you can see. This bullet – this is important, Mr. McLeland talked about this a little bit – it was never shot, it had never been shot out of a gun. It had been cycled through a gun. Does it make sense? And it had sufficient markings, this bullet did. So what they did then is law enforcement took a pristine bullet and put it into Richard's gun and they cycled it through to recreate what that bullet – how that bullet was – came when they found it. And when they took the pristine bullet after it had been cycled and they looked at it, some of the markings were insufficient, they couldn't – they just couldn't be seen well enough, and they're trying to compare that to this bullet that did have sufficient markings. That's the starting point of the problems with this bullet. So what did they have to do? They had to then – they – law enforcement, they really wanted this to work out, so they fired the bullet so there's more pressure on it and the tools and the things inside can show more markings. So now they're comparing a bullet that was fired out of the weapon – now it has sufficient markings on there to, at least, see it – they're comparing that bullet to the bullet that was found in the ground that had insufficient markings – or that had sufficient markings. Now this bullet has sufficient markings and now they're going to tell you, “Oh, yes, they're the same bullet.”

It's comparing apples and oranges, that's what you're going to hear. By the way, and look at the – you all have eyeballs, when you see these comparison photographs, your own eyeballs will tell you that these don't match, your own eyeballs. You don't need an expert, folks, 'cause you have eyes. You'll also hear things – I don't want to get too muddled down – you're gonna also hear about subclass. Any gun, let's say a Sig Sauer that fires a weapon, it's gonna have similar tool markings – that's what they call it – on each individual bullet, but they are gonna be similar subclasses, and there's some of that going on here, too, that these bullets are consistent in some ways because they came from, you know, gun that was similar. And these subclasses, Mr. Rozzi will be handling all of the ballistics, and he will be telling you why that is important and why it shows that these – this magic bullet is of really no value. You will also hear from Melissa Oberg, who is the State's witness. She no longer works – I'm sorry, I know people might have to go to the restroom. I'm going as quickly as I can, guys, I really am. I'm sorry. Melissa Oberg, she will tell you that she's no longer with the Indiana State Police, she's the one that tested these bullets and is the one that's interpreting the evidence of these bullets. And you'll hear her say this, "When I – I did this over 1100, 1300 times, and when people – you know, I was never wrong. Now, the people that I worked with, I would check their work out, and their work, they were wrong, but I was never wrong." That's the person that's interpreting this bullet. You'll hear her testify. They've got a magic bullet and we have got other evidence. I'm gonna quickly go through the timeline and then – I'm sorry, this is so important, but we'll talk about Betsy Blair again. Betsy Blair arrives at – so the third thing that they can try to say that they have is the timeline on their side, and they cannot, the evidence will not support that.

The timeline. Betsy Blair gets to the trails around 1:49 p.m., right before Kelsi drops off the girls; right? So drops them off at the Mears entrance, they go on to the – Betsy goes on to the trail. She walks the trails, she gets to the – where the High Bridge starts – when you see all the evidence, this'll start to make sense to you. It's hard to conceptualize it right now, but the trail ends and there the bridge begins. And when she got to where the bridge begins, she saw from – with her own eyes, from about 50 feet away, a guy who they're claiming is Bridge Guy. What they failed to tell you, the State, just a moment ago, is that the person that Betsy Blair observed was in his early 20s, maybe 30, he had brown fluffy hair. Richard Allen has kept his hair short since 1989. His wife will tell you about it. He was in the military, he likes it short, and he obviously ain't 20-years old. Betsy – Richard – Rick is short. Betsy Blair did not say the guy was short. That's the guy that they say is the killer. Betsy Blair (inaudible). I told you about the car that Betsy Blair saw, doesn't fit the description at all of Richard Allen's car, totally different. That timeline will be a problem. Sarah Carbaugh. See, one way to easy – kind of easily understand that – who these witnesses are, and I know it's hard right now, but Betsy Blair is at the beginning – I'm seeing them like bookends, Betsy Blair's at the beginning, the person that she saw that they say is Richard Allen, you know, the 20-some year old guy with brown poufy hair, that's at the beginning. Sarah Carbaugh's at the very end. They're bookends. They're supposed to be the same guy, according to their theory. So this Sarah Carbaugh, who did she see? Well, she's gonna testify – I think you're gonna like her, but her story just is completely inconsistent, that's what you'll see. In 2017, in June of 2017, she was interviewed and she said that the guy she saw – and they failed to tell you this – the guy she saw had a tan jacket on and was muddy.

2019, two years later, after the video's been out, photos have been out, her story is now, two years later, “No” – well, she didn't say no, she just said, “The guy I saw had a blue jacket on and was bloody. Now he was muddy and bloody, like a pig had – he had slaughtered a pig.” Her story’s completely changed. And, you know, you'll have to take her testimony for what you think it's worth. But if Betsy Blair did not see Richard Allen, then their theory is falling apart. And you can conclude that there's reasonable doubt that she saw Richard Allen and you’ll know what to do. If Sarah Carbaugh did not see Richard Allen or you don't trust your testimony, then that will be reasonable doubt. And if – also, if they didn't see the same person, the person they describe are two different people – they're saying it's the same person, Richard Allen – their timeline will not work. In the home stretch here. Other stuff that's important, this is what I've labeled it, DNA. Richard Allen, no DNA at the scene, not connected in any way. Social media on Richard Allen, no connection to the girls, no connection to the scene, no connection to any of that business. Forensic data, none of that connecting Richard Allen to anything. Talked about the hair on A.W.'s hand. And just seven years? Really? I mean, that's what you're gonna find out. It's taken them seven years to figure out whose hair is on her hand, whether it's family or not. They're scrambling right now. Here's another thing you're gonna find out: Dr. Kohr is the guy who conducted the forensic pathology – he’s the forensic pathologist who conducted these autopsies. He’s going to tell you that it looks like there were two blades used on the girls’ necks, a serrated blade – isn’t there a lot of stuff here? – a serrated blade and a non-serrated blade. And they’re gonna tell you that Richard Allen claimed that he killed those girls with a box cutter at some point. Serrated blade and non-serrated blade. That could indicate two people is

what the Defense will tell you, two different people using two different knives, there's evidence of that and that's what that evidence is. Two people or more. Hmm. I'm not even talking about the crime scene, I'm not gonna do that to you, I think we all need to take a break, but when you see the crime scene, you're going to understand that it is highly unlikely that one person could have done everything that was done to those girls and surrounding and around those girls. It is a very bizarre scene, there's sticks laid across these girls –

THE COURT: Mr. Baldwin, with all due respect, you are very closely and are arguing the evidence. This is not argument, this is opening statement, sir. I've given you lots of leeway. Move on, please.

MR. BALDWIN: Thank you. There were sticks on those girls. It is a scene that you will see and you will have to make a decision about can one person do that. Well, you're gonna find out from the evidence that they didn't think that one person could do all of that until Richard Allen was arrested. Who's they? Tobe Leazenby, the sheriff then, he thought not one – it's gonna take more than one person to do all that. Who else? Tony Liggett, you need more than one person. And there might be other people, other law enforcement, that get up and testify that it was more than one person, that it would take more than one person. Please wait. Richard Allen is innocent, he's really innocent.

THE COURT: You may call your first witness, Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

MS. DIENER: Judge, do we need time for our separation of witness folks to –

THE COURT: Sure.

MS. DIENER: -- leave?

THE COURT: Yes. All right. Excuse me. The jury's indicating they need a quick break.

MS. DIENER: Okay, Judge.

THE COURT: So we'll go ahead and take a quick break. Ladies and gentlemen, while you're outside the courtroom, please, keep your minds open. Please don't form any opinions or conclusions about anything. There's no evidence that you've heard yet, so there's nothing for you to discuss. Gentlemen.

THE BAILIFF: All rise.

(Jury out at 10:54 a.m.)

THE COURT: All right, let's reconvene at ten after, please. Jodie, you can go off the record.

(Off record at 10:54 a.m.)

(On record at 11:17 a.m.)

THE BAILIFF: All rise.

(Jury in at 11:19 a.m.)

THE BAILIFF: Thank you. You may be seated.

THE COURT: Thank you, gentlemen. All right, Ms. Diener, you may call your first witness.

MS. DIENER: Thank you, Judge. Judge, the State would call Becky Patty.

(Witness sworn.)

DIRECT EXAMINATION OF BECKY PATTY

QUESTIONS BY MS. DIENER.

Q So we'll test it and she'll let us know if – that she cannot hear you; okay?

A Okay.

Q All right. So I know you're used to talking to the person asking you the questions, Becky, but I'm gonna ask you to look toward the jury, so they can hear you, rather than talking toward me, in case that would cause some difficulty; okay? All right. Let's tell everyone your name.
A My name is Becky Patty.
Q And how do you spell your first name, Becky?
A B-E-C-K-Y.
Q And your last name?
A P-A-T-T-Y.
Q And what city or town do you live in?
A Delphi, Indiana.
Q Do you live in town or out of town?
A No, we live in the country. We live about seven miles from here.
Q And have you always lived out in the country?
A For the last 32 years.
Q Okay. So certainly from the timeframe of 2017 until now?
A Yes.
Q Okay. And did you graduate from Delphi?
A Yes.
Q So this is your hometown. You know the area very well, don't you?
A I've – Carroll County forever.
Q Okay. Great. And did you go to school after high school?
A I went – we did some – I did some college.
Q Okay. Did you do it locally or did you go away from the area?
A No, locally.

Q And what do you do for a living, if anything? Or maybe you're a homemaker, which is perfectly fine.

A I do home appraisals.

Q And do you have an office? Do you work for someone else?

A I have my own business and my office is at home.

Q Has it been that way the entire time?

A Yes.

Q And so the office is within your home or adjacent to it? Maybe you can tell us a little bit about that.

A I took over part the garage, we made an office out in the garage.

Q Okay. So back in 2017, who was living with you at your home?

A At that time, in 2017, it was my husband and I, Kelsi, L.G., my son Derrick and my other son Cody.

Q All right, so let's go through those. You said your husband.

A My husband.

Q His name is?

A Mike Patty.

Q All right. And then you said Kelsi; who's Kelsi?

A My granddaughter Kelsi, at that time German.

Q Okay. And what is her last name now?

A Siebert.

Q So she's married; is that correct?

A Yes..

Q You said L.G.

A And L.G. L.G.